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**ABSTRACT**

This document contains witnesses' testimonies and prepared statements from the Congressional hearing called to consider enactment of H.R. 2673, a bill to facilitate implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The text of H.R. 2673 is included in the document as is the text of H.R. 3971, a bill to establish procedures to implement the 1980 Hague Convention on the Civil Aspects of International Child Abduction. Opening statements are included from Representatives Barney Frank and E. Clay Shaw. Testimony is given by Representative Tom Lantos in support of his legislation, H.R. 2673. Lantos cites statistics on child abduction, describes the Hague Convention's plan to establish a system of administrative and legal procedures designed to ensure the prompt return of abducted children, and notes that the Hague Convention has been ratified by such countries as the United Kingdom, France, Portugal, Switzerland, Hungary, and Canada. Other witnesses providing testimony include: (1) Peter Pfund, United States Department of State; (2) Stephen Markman, United States Department of Justice; (3) Patricia Hoff and Philip Schwartz, Family Law Section, American Bar Association; (4) David Lloyd, National Center for Missing and Exploited Children; and (5) Holly Planells, the mother of a child abducted to Jordan by his father, and president of American Children Held Hostage. Supplemental materials are included. (NB)

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# INTERNATIONAL CHILD ABDUCTION ACT

## HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND  
GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

**H.R. 2673 and H.R. 3971**

INTERNATIONAL CHILD ABDUCTION ACT

FEBRUARY 3, 1988

**Serial No. 58**



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(III)

# INTERNATIONAL CHILD ABDUCTION ACT

WEDNESDAY, FEBRUARY 3, 1988

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND  
GOVERNMENTAL RELATIONS,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:25 a.m., in room 2226, Rayburn House Office Building, Hon. Barney Frank (chairman of the subcommittee) presiding.

Present: Representatives Frank, Cardin, Shaw, and Coble.

Staff present: Janet S. Potts, counsel; Belle Cummins, assistant counsel; Roger T. Fleming, associate counsel; and Florence McGrady, legal assistant.

Mr. FRANK. The hearing of the Subcommittee on Administrative Law and Governmental Relations will come to order. We apologize for the delay which was necessitated by our having to vote.

Mr. SHAW. Mr. Chairman, I would ask unanimous consent this hearing could be covered by photography or other types of media.

Mr. FRANK. The Chair hears no objection, so we will allow photography.

This is an important issue which this subcommittee promised and the full committee chairman promised we would address last year when the State Department authorization came up. The moral urgency of doing everything we can to deal with the problem of child abduction is very clear. I don't think people need feel that we are going to need urging to act on that. What we will be focusing on are some of the technical questions about how best to do it. I think there is general agreement with the outlines of this legislation. There are some particular questions about the privacy and other implications. We are not dealing here with a matter of any great controversy. It is an important matter, but one that has overwhelming support. And to the extent that people can focus on some of those specifics, that will be helpful. (Copies of H.R. 2673, the subject of this hearing, and H.R. 3971, which was later reported by the Committee on the Judiciary to address these issues, follow.)

100TH CONGRESS  
1ST SESSION

# H. R. 2673

To facilitate implementation of the 1980 Hague Convention on the Civil Aspects  
of International Child Abduction, and for other purposes

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 1987

Mr. LANTOS (for himself and Mr. GILMAN) introduced the following bill, which  
was referred jointly to the Committees on the Judiciary and Ways and Means

---

## A BILL

To facilitate implementation of the 1980 Hague Convention on  
the Civil Aspects of International Child Abduction, and for  
other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "International Child  
5 Abduction Act".

6 **SEC. 2. FINDINGS AND DECLARATION OF PURPOSES.**

7 The Congress finds that—

8 (1) The international abduction or wrongful reten-  
9 tion of children is harmful to their well-being.

1           (2) Persons should not be permitted to obtain cus-  
2           tody of children by virtue of their wrongful removal or  
3           retention.

4           (3) International abductions and retentions of chil-  
5           dren are increasing, and only concerted cooperation  
6           pursuant to an international agreement can effectively  
7           combat this problem.

8           (4) The 1980 Hague Convention on the Civil As-  
9           pects of International Child Abduction establishes legal  
10          rights and procedures for the prompt return of children  
11          who have been wrongfully removed or retained, as well  
12          as for securing the exercise of visitation rights. Chil-  
13          dren who are wrongfully removed or retained within  
14          the meaning of the Convention are to be promptly re-  
15          turned unless one of the narrow exceptions set forth in  
16          the Convention applies. The Convention provides a  
17          sound treaty framework to help resolve the problem of  
18          international abduction and retention of children and  
19          will deter such wrongful removals and retentions.

20          (5) This Act is designed to facilitate implementa-  
21          tion of the Convention in the United States.

22          (6) The provisions of this Act are in addition to  
23          and not in lieu of the provisions of the Convention.

24          (7) In enacting this Act the Congress recog-  
25          nizes—

1 (A) the international character of the Con  
2 vention; and

3 (B) the need for uniform international inter-  
4 pretation of the Convention.

5 (8) The Convention and this Act empower courts  
6 in the United States to determine only rights under the  
7 Convention and not the merits of any underlying child  
8 custody claims.

## 9 **TITLE I—PROVISIONS IMPLE-** 10 **MENTING THE CONVENTION**

### 11 **SECTION 101. DEFINITIONS.**

12 For the purposes of this Act—

13 (1) “Convention” means the 1980 Hague Con-  
14 vention on the Civil Aspects of International Child  
15 Abduction;

16 (2) “United States Central Authority” means the  
17 agency of the Federal Government designated by the  
18 President to perform on behalf of the United States the  
19 functions of Central Authority set out in the Conven-  
20 tion and this Act;

21 (3) “court” means any court of competent juris-  
22 diction of a State, the District of Columbia, a territory  
23 or possession of the United States, or the United  
24 States;



1           (4) "Federal Parent Locator Service" means the  
2 service established by the Secretary of Health and  
3 Human Services pursuant to section 453 of the Social  
4 Security Act (42 U.S.C. 653);

5           (5) "person" includes any individual, an institu-  
6 tion, or any other legal entity or body;

7           (6) "applicant" means any person who, pursuant  
8 to the Convention, files an application with the United  
9 States Central Authority or a Central Authority of any  
10 other party to the Convention for the return of a child  
11 alleged to have been wrongfully removed or retained or  
12 for arrangements for organizing or securing the  
13 effective exercise of rights of access pursuant to the  
14 Convention;

15           (7) "petitioner" means any person who files a pe-  
16 tition in court seeking relief under the Convention and  
17 this Act;

18           (8) "respondent" means any person against whose  
19 interests a petition is filed pursuant to the Convention  
20 and this Act;

21           (9) "authorities" as used in article 15 of the Con-  
22 vention includes public officials and courts;

23           (10) "rights of access" means visitation rights;

1 (11) "wrongful removal or retention" includes a  
2 removal or retention of a child prior to the entry of a  
3 custody order regarding that child; and

4 (12) "commencement of proceedings" as used in  
5 article 12 of the Convention, with regard to the return  
6 of children located in the United States, means the  
7 filing of a petition in accordance with section 102(b).

8 **SEC. 102. ADMINISTRATIVE AND JUDICIAL REMEDIES.**

9 (a) The courts of the States, the District of Columbia,  
10 and the territories and possessions of the United States, and  
11 the United States district courts shall have concurrent  
12 original jurisdiction with regard to actions arising under the  
13 Convention and this Act.

14 (b) Any person seeking judicial relief under the Conven-  
15 tion and this Act may commence a civil action by filing a  
16 petition in any court described in subsection (a) within the  
17 jurisdiction of which a child is located at the time the petition  
18 is filed.

19 (c) Notice of an action for the return of a child pursuant  
20 to the Convention and this Act shall be given in accordance  
21 with the applicable law governing notice in interstate child  
22 custody proceedings.

23 (d) A petitioner who seeks return of a child under the  
24 Convention and this Act shall establish by a preponderance of  
25 the evidence that the child has been wrongfully removed or

1 retained. A respondent who opposes return of the child has  
2 the burden of establishing by clear and convincing evidence  
3 that one of the exceptions set forth in the Convention applies.

4 (e) Full faith and credit shall be accorded by courts in  
5 the United States to the judgments of other courts in the  
6 United States ordering the return of a child pursuant to the  
7 Convention and this Act or denying such return.

8 (f) The remedies established by the Convention and this  
9 Act shall be in addition to remedies available under other  
10 laws or international agreements.

11 **SEC. 103. PROVISIONAL REMEDIES.**

12 (a) In furtherance of the objectives of the Convention  
13 and subject to the provisions of subsection (b), any court ex-  
14 ercising jurisdiction over a petition filed pursuant to the Con-  
15 vention and this Act, may, either directly or through an ap-  
16 propriate intermediary, take or cause to be taken provisional  
17 measures under Federal or State law, as appropriate, to pro-  
18 tect the well-being of a child or to prevent the child's  
19 further removal or concealment prior to final disposition of  
20 the petition.

21 (b) No court exercising jurisdiction over a petition filed  
22 pursuant to the convention and this Act may order a child  
23 provisionally removed from a person having physical control  
24 of the child unless the applicable requirements of State law  
25 are satisfied.

1 **SEC. 104. ADMISSIBILITY OF DOCUMENTS.**

2 Any application to the United States Central Authority  
3 or petition to a court submitted in accordance with the terms  
4 of the Convention, together with documents and any other  
5 information appended thereto or provided subsequently, shall  
6 be admissible in court without the need for any legalization  
7 or authentication.

8 **SEC. 105. UNITED STATES CENTRAL AUTHORITY.**

9 (a) The President shall designate a Federal agency to  
10 serve as Central Authority for the United States.

11 (b) The functions of the United States Central Authority  
12 and cooperating State and local authorities and agencies are  
13 those ascribed to the Central Authority by the Convention  
14 and this Act.

15 (c) The United States Central Authority shall have au-  
16 thority to issue regulations to implement the Convention and  
17 this Act.

18 (d) The United States Central Authority shall have au-  
19 thority to obtain information from the Federal Parent Loca-  
20 tor Service under section 463 of part D of title IV of the  
21 Social Security Act.

22 **SEC. 106. COSTS AND FEES.**

23 (a) No Federal, State, or local authority shall impose on  
24 the applicant any fee in relation to the administrative proc-  
25 essing of applications submitted under this Convention.

(b) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions and travel costs for the returning child and any accompanying persons, except as provided in subsection (c) or (d).

(c) Subject to subsection (d), legal fees or court costs incurred in connection with proceedings under the Convention or this Act shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.

(d) Any court ordering the return of a child under the Convention shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of return proceedings, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

SEC. 107. COLLECTION, MAINTENANCE AND DISSEMINATION  
OF INFORMATION.

(a) Notwithstanding section 522a of title 5, United States Code and any other provision of law, the United States Central Authority may, under such conditions as it prescribes by regulation, receive from or transmit to any Federal, State, or foreign authority or person information for purposes related to the Convention. No information shall be

1 disclosed by the United States Central Authority pursuant to  
2 this section, however, if such disclosure would contravene the  
3 national security or law enforcement interests of the United  
4 States or the confidentiality of census data.

5 (b) Requests for information under this section shall be  
6 submitted in such manner and form as the United States  
7 Central Authority may prescribe by regulation and shall be  
8 accompanied or supported by such documents as the United  
9 States Central Authority may require.

10 (c) Notwithstanding any other provision of law (but sub-  
11 ject to subsection (d)), whenever the head of any department,  
12 agency, or instrumentality of the United States or of any  
13 State, territory, or possession of the United States receives a  
14 request from the United States Central Authority for infor-  
15 mation authorized to be provided to such Central Authority  
16 under this section, such individual shall promptly cause a  
17 search to be made of the files and records maintained by such  
18 department, agency, or instrumentality with a view to deter-  
19 mining whether the information requested is contained in any  
20 such files or records. If such search discloses the information  
21 requested, such individual shall immediately transmit such in-  
22 formation to the United States Central Authority, except that  
23 if any information is obtained the disclosure of which would  
24 contravene national security or law enforcement interests of  
25 the United States or the confidentiality of census data, such

1 information shall not be transmitted. The responding agency  
2 shall be obligated to advise the United States Central Au-  
3 thority immediately upon completion of the requested search.

4 (d) To the extent that information the United States  
5 Central Authority is authorized to obtain under the provi-  
6 sions of subsection (c) can be obtained through the Federal  
7 Parent Locator Service under the provisions of section 463 of  
8 the Social Security Act, such Central Authority shall use the  
9 procedure provided for under such section 463 in its efforts to  
10 obtain such information, and shall not request such informa-  
11 tion directly under the provisions of subsection (c) of this  
12 section.

13 (e) Nothing in this section shall be construed as permit-  
14 ting the United States Central Authority to obtain tax return  
15 information except as provided in section 6103 of the Inter-  
16 nal Revenue Code of 1986 and section 453 of the Social  
17 Security Act.

18 (f) The United States Central Authority shall maintain  
19 appropriate records concerning its activities and the disposi-  
20 tion of cases brought to its attention.

21 **SEC. 108. INTER-AGENCY COORDINATING GROUP.**

22 (a) The Secretary of State, the Secretary of Health and  
23 Human Services, and the Attorney General shall designate  
24 Federal employees and may, from time to time, designate  
25 private citizens to serve on an interagency coordinating

1 group to monitor operation of the Convention and to provide  
 2 advice on its implementation. This group shall meet from  
 3 time to time at the request of the United States Central Au-  
 4 thority. The agency in which the United States Central Au-  
 5 thority is located is authorized to reimburse such private citi-  
 6 zens for travel and other expenses incurred in participating at  
 7 meetings of the coordinating groups at rates not to exceed  
 8 those authorized for Federal employees under title 5 of the  
 9 United States Code.

10 (b) The interagency coordinating group shall be exempt  
 11 from the Federal Advisory Committee Act (5 U.S.C. App. D).

12 **SEC. 109. AUTHORIZATION OF APPROPRIATION.**

13 There are hereby authorized to be appropriated for each  
 14 fiscal year such sums as may be necessary to carry out the  
 15 purposes of the Convention and this Act.

16 **TITLE II—AMENDMENTS TO**  
 17 **OTHER LAWS**

18 **SEC. 201. AMENDMENT CONCERNING FEDERAL PARENT LOCA-**  
 19 **TOR SERVICE.**

20 Section 463 of the Social Security Act (42 U.S.C. 663)  
 21 is amended—

22 (1) in subsection (b), by striking out “under this  
 23 tion” and inserting in lieu thereof “under subsection  
 24 (a) and



1 (2) by adding at the end the following new sub-  
2 section:

3 “(e) The Secretary shall enter into an agreement with  
4 the Central Authority designated by the President in accord-  
5 ance with section 105 of the International Child Abduction  
6 Act, under which the services of the Parent Locator Service  
7 established under section 453 shall be made available to such  
8 Central Authority for the purpose of determining the where-  
9 abouts of any parent or child when such information is to be  
10 used to locate such parent or child for the purpose of carrying  
11 out its responsibilities under that Act. The Parent Locator  
12 Service shall charge no fees for services requested pursuant  
13 to this subsection.”.

14 **SEC. 202. AMENDMENT TO THE INTERNAL REVENUE CODE.**

15 Subparagraph (B) of section 6103(l)(6) of the Internal  
16 Revenue Code of 1986 (26 U.S.C. 6103(l)(6)(B)) is amended  
17 by inserting before the period at the end thereof the follow-  
18 ing: “and for purposes of, and to the extent necessary in,  
19 locating individuals in connection with the abduction or  
20 wrongful restraint or retention of a child”.

○

100TH CONGRESS  
2D SESSION

# H. R. 3971

To establish procedures to implement the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and for other purposes

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 1988

Mr LANTOS introduced the following bill, which was referred to the Committee on the Judiciary

---

## A BILL

To establish procedures to implement the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "International Child  
5 Abduction Remedies Act".

### 6 SEC. 2. FINDINGS AND DECLARATIONS.

7 (a) FINDINGS.—The Congress makes the following  
8 findings:

9 (1) The international abduction or wrongful reten-  
10 tion of children is harmful to their well-being.

1           (2) Persons should not be permitted to obtain cus-  
2       tody of children by virtue of their wrongful removal or  
3       retention.

4           (3) International abductions and retentions of chil-  
5       dren are increasing, and only concerted cooperation  
6       pursuant to an international agreement can effectively  
7       combat this problem.

8           (4) The 1980 Hague Convention on the Civil As-  
9       pects of International Child Abduction establishes legal  
10      rights and procedures for the prompt return of children  
11      who have been wrongfully removed or retained, as well  
12      as for securing the exercise of visitation rights. Chil-  
13      dren who are wrongfully removed or retained within  
14      the meaning of the Convention are to be promptly re-  
15      turned unless one of the narrow exceptions set forth in  
16      the Convention applies. The Convention provides a  
17      sound treaty framework to help resolve the problem of  
18      international abduction and retention of children and  
19      will deter such wrongful removals and retentions.

20      (b) DECLARATIONS.—The Congress makes the follow-  
21      ing declarations:

22           (1) It is the purpose of this Act to establish proce-  
23      dures for the implementation of the Convention in the  
24      United States.

1 (2) The provisions of this Act are in addition to  
2 and not in lieu of the provisions of the Convention.

3 (3) In enacting this Act the Congress recog-  
4 nizes—

5 (A) the international character of the Con-  
6 vention; and

7 (B) the need for uniform international inter-  
8 pretation of the Convention.

9 (4) The Convention and this Act empower courts  
10 in the United States to determine only rights under the  
11 Convention and not the merits of any underlying child  
12 custody claims.

13 **SEC. 2. DEFINITIONS.**

14 For the purposes of this Act—

15 (1) the term “applicant” means any person who,  
16 pursuant to the Convention, files an application with  
17 the United States Central Authority or a Central Au-  
18 thority of any other party to the Convention for the  
19 return of a child alleged to have been wrongfully re-  
20 moved or retained or for arrangements for organizing  
21 or securing the effective exercise of rights of access  
22 pursuant to the Convention;

23 (2) the term “Convention” means the Convention  
24 on the Civil Aspects of International Child Abduction,  
25 done at The Hague on October 25, 1980;

1 (3) the term "court" means any court of compe-  
2 tent jurisdiction of a State or the United States;

3 (4) the term "Federal Parent Locator Service"  
4 means the service established by the Secretary of  
5 Health and Human Services pursuant to section 453 of  
6 the Social Security Act (42 U.S.C. 653);

7 (5) the term "petitioner" means any person who,  
8 in accordance with this Act, files a petition in court  
9 seeking relief under the Convention;

10 (6) the term "person" includes any individual, in-  
11 stitution, or other legal entity or body;

12 (7) the term "respondent" means any person  
13 against whose interests a petition is filed in court, in  
14 accordance with this Act, which seeks relief under the  
15 Convention and this Act; and

16 (8) the term "rights of access" means visitation  
17 rights;

18 (9) the term "State" means any of the several  
19 States, the District of Columbia, and any common-  
20 wealth, territory, or possession of the United States;  
21 and

22 (10) the term "United States Central Authority"  
23 means the agency of the Federal Government designat-  
24 ed by the President under section 6(a).

1 SEC. 3. JUDICIAL REMEDIES.

2 (a) JURISDICTION OF THE COURTS.—The courts of the  
3 States and the United States district courts shall have con-  
4 current original jurisdiction of actions arising under the Con-  
5 vention.

6 (b) PETITIONS.—Any person seeking to initiate judicial  
7 proceedings under the Convention for the return of a child or  
8 for arrangements for organizing or securing the effective ex-  
9 ercise of rights of access may do so by commencing a civil  
10 action by filing a petition for the relief sought in any court  
11 described in subsection (a) within the jurisdiction of which a  
12 child is located at the time the petition is filed.

13 (c) NOTICE.—Notice of an action brought under subsec-  
14 tion (b) shall be given in accordance with the applicable law  
15 governing notice in interstate child custody proceedings.

16 (d) BURDENS OF PROOF.—A petitioner in an action  
17 brought under subsection (b) shall establish by a preponder-  
18 ance of the evidence—

19 (1) in the case of an action for the return of a  
20 child, that the child has been wrongfully removed or  
21 retained within the meaning of the Convention; and

22 (2) in the case of an action for arrangements for  
23 organizing or securing the effective exercise of rights of  
24 access, that the petitioner has such rights.

25 In the case of an action for the return of a child, a respondent  
26 who opposes the return of the child has the burden of estab-

1 lishing by clear and convincing evidence that one of the ex-  
2 ceptions set forth in article 12, 13, or 20 of the Convention  
3 applies.

4 (e) APPLICATION OF THE CONVENTION.—For purposes  
5 of any action brought under this Act—

6 (1) the term “authorities”, as used in article 15 of  
7 the Convention, includes courts and appropriate gov-  
8 ernment agencies;

9 (2) the terms “wrongful removal or retention” and  
10 “wrongfully removed or retained”, as used in the Con-  
11 vention, includes a removal or retention of a child prior  
12 to the entry of a custody order regarding that child;  
13 and

14 (3) the term “commencement of proceedings”, as  
15 used in article 12 of the Convention, means, with re-  
16 spect to the return of children located in the United  
17 States, the filing of a petition in accordance with sub-  
18 section (b) of this section.

19 (f) FULL FAITH AND CREDIT.—Full faith and credit  
20 shall be accorded by courts in the United States to the judg-  
21 ments of other courts in the United States ordering or deny-  
22 ing the return of a child pursuant to the Convention.

23 (g) REMEDIES UNDER THE CONVENTION NOT EXCLU-  
24 SIVE.—The remedies established by the Convention and this

1 Act shall be in addition to remedies available under other  
2 laws or international agreements.

3 **SEC. 4. PROVISIONAL REMEDIES.**

4 (a) **AUTHORITY OF COURTS.**—In furtherance of the ob-  
5 jectives of article 7(b) and other provisions of the Convention,  
6 and subject to the provisions of subsection (b) of this section,  
7 any court exercising jurisdiction over a petition filed under  
8 section 3(b) of this Act may take or cause to be taken meas-  
9 ures under Federal or State law, as appropriate, to protect  
10 the well-being of a child or to prevent the child's further  
11 removal or concealment prior to final disposition of the  
12 petition.

13 (b) **LIMITATION ON AUTHORITY.**—No court exercising  
14 jurisdiction over a petition filed under section 3(b) may, under  
15 subsection (a) of this section, order a child removed from a  
16 person having physical control of the child unless the applica-  
17 ble requirements of State law are satisfied.

18 **SEC. 5. ADMISSIBILITY OF DOCUMENTS.**

19 Any application to the United States Central Authority  
20 or petition to a court, which seeks relief under the Conven-  
21 tion, together with documents and any other information ap-  
22 pended thereto or provided subsequently, shall be admissible  
23 in court without the need of any authentication.



1 SEC. 6. UNITED STATES CENTRAL AUTHORITY.

2 (a) DESIGNATION.—The President shall designate a  
3 Federal agency to serve as Central Authority for the United  
4 States.

5 (b) FUNCTIONS.—The functions of the United States  
6 Central Authority are those ascribed to the Central Author-  
7 ity by the Convention and this Act.

8 (c) REGULATORY AUTHORITY.—The United States  
9 Central Authority is authorized to issue such regulations as  
10 may be necessary to carry out its functions under the Con-  
11 vention and this Act.

12 (d) OBTAINING INFORMATION FROM PARENT LOCA-  
13 TOR SERVICE.—The United States Central Authority may,  
14 to the extent authorized by the Social Security Act, obtain  
15 information from the Federal Parent Locator Service.

16 SEC. 7. COSTS AND FEES.

17 (a) ADMINISTRATIVE COSTS.—No Federal, State, or  
18 local authority shall impose on an applicant any fee in rela-  
19 tion to the administrative processing of applications submit-  
20 ted under this Convention.

21 (b) COSTS INCURRED IN CIVIL ACTIONS.—(1) Petition-  
22 ers may be required to bear the costs of legal counsel or  
23 advisors, court costs incurred in connection with their peti-  
24 tions, and travel costs for the return of the child involved and  
25 any accompanying persons, except as provided in paragraphs  
26 (2) and (3).

1       (2) Subject to paragraph (3), legal fees or court costs  
2 incurred in connection with an action brought under section 3  
3 shall be borne by the petitioner unless they are covered by  
4 payments from Federal, State, or local legal assistance or  
5 other programs.

6       (3) Any court ordering the return of a child pursuant to  
7 an action brought under section 3 shall order the respondent  
8 to pay necessary expenses incurred by or on behalf of the  
9 petitioner, including court costs, legal fees, foster home or  
10 other care during the course of proceedings in the action, and  
11 transportation costs related to the return of the child, unless  
12 the respondent establishes that such order would be clearly  
13 inappropriate.

14   **SEC. 8. COLLECTION, MAINTENANCE AND DISSEMINATION OF**  
15                           **INFORMATION.**

16       (a) **IN GENERAL.**—Notwithstanding section 552a of  
17 title 5, United States Code, and any other provision of law  
18 the United States Central Authority may, under such condi-  
19 tions as it prescribes by regulation, receive from or transmit  
20 to any Federal, State, or foreign authority or person informa-  
21 tion for purposes related to the Convention.

22       (b) **REQUESTS FOR INFORMATION.**—Requests for infor-  
23 mation under this section shall be submitted in such manner  
24 and form as the United States Central Authority may pre-  
25 scribe by regulation and shall be accompanied or supported

1 by such documents as the United States Central Authority  
2 may require.

3 (c) RESPONSIBILITY OF AGENCIES.—Notwithstanding  
4 any other provision of law (but subject to subsection (d)),  
5 whenever the head of any department or agency of the  
6 United States or of any State receives a request from the  
7 United States Central Authority for information authorized to  
8 be provided to such Central Authority under this section,  
9 such department or agency head shall promptly cause a  
10 search to be made of the files and records maintained by such  
11 department or agency in order to determine whether the in-  
12 formation requested is contained in any such files or records.  
13 If such search discloses the information requested, such de-  
14 partment or agency head shall immediately transmit such in-  
15 formation to the United States Central Authority, except that  
16 if any information is obtained the disclosure of which would  
17 contravene national security or law enforcement interests of  
18 the United States or the disclosure of which would be prohib-  
19 ited by section 9 of title 13, United States Code, such infor-  
20 mation shall not be transmitted. Such department or agency  
21 head shall, immediately upon completion of the requested  
22 search, notify the United States Central Authority of the re-  
23 sults of the search and whether one of the exceptions set  
24 forth in the preceding sentence applies. In any case in which  
25 the Central Authority receives information and the appropri-

## 11 .

1 ate agency thereafter notifies the Central Authority that dis-  
2 closure of the information would contravene national security  
3 or law enforcement interests of the United States or would be  
4 prohibited by section 9 of title 13, United States Code, the  
5 Central Authority may not disclose that information under  
6 subsection (a).

7 (d) INFORMATION AVAILABLE FROM PARENT LOCA-  
8 TOR SERVICE.—To the extent that information which the  
9 United States Central Authority is authorized to obtain under  
10 the provisions of subsection (c) can be obtained through the  
11 Federal Parent Locator Service, the United States Central  
12 Authority shall first seek to obtain such information from the  
13 Federal Parent Locator Service, before requesting such infor-  
14 mation directly under the provisions of subsection (c) of this  
15 section.

16 (e) TAX RETURN INFORMATION.—Nothing in this sec-  
17 tion shall be construed as permitting the United States Cen-  
18 tral Authority to obtain tax return information except as pro-  
19 vided in section 6103 of the Internal Revenue Code of 1986  
20 and section 453 of the Social Security Act.

21 (f) RECORDKEEPING.—The United States Central Au-  
22 thority shall maintain appropriate records concerning its ac-  
23 tivities and the disposition of cases brought to its attention.

1 **SEC. 9. INTERAGENCY COORDINATING GROUP.**

2 (a) **DESIGNATION.**—The Secretary of State, the Secre-  
3 tary of Health and Human Services, and the Attorney Gen-  
4 eral shall designate Federal employees and may, from time to  
5 time, designate private citizens to serve on an interagency  
6 coordinating group to monitor the operation of the Conven-  
7 tion and to provide advice on its implementation. This group  
8 shall meet from time to time at the request of the United  
9 States Central Authority. The agency in which the United  
10 States Central Authority is located is authorized to reimburse  
11 such private citizens for travel and other expenses incurred in  
12 participating at meetings of the coordinating groups at rates  
13 not to exceed those authorized under subchapter I of chapter  
14 57 of title 5, United States Code, for employees of agencies.

15 (b) **EXEMPTION FROM FEDERAL ADVISORY COMMIT-**  
16 **TEE ACT.**—The interagency coordinating group shall be  
17 exempt from the Federal Advisory Committee Act (5 U.S.C.  
18 App. D).

19 **SEC. 10. AUTHORIZATION OF APPROPRIATION.**

20 There are authorized to be appropriated for each fiscal  
21 year such sums as may be necessary to carry out the pur-  
22 poses of the Convention and this Act.

○

Let me also say to the witnesses there is no need to thank us for having the hearing; we will take that as said. There is no need to introduce yourself to any great length. There is no need to tell us about your organization. We don't care how many members you have, and if we didn't think you were important and competent, we wouldn't ask you to testify. The sooner you can get to the merits, the happier we will all be.

Mr. Shaw, any opening statement?

Mr. SHAW. Mr. Chairman, I want to compliment you for scheduling this hearing on the legislation at this early date of the year as was promised by the Judiciary Committee conferees during the State Department Authorization Conference late last year.

The serious issues raised by parental child abduction need to be addressed, and I believe that the Hague Convention and this legislation, which would facilitate the implementation of the Hague Convention, is a strong first step towards addressing this problem. I look forward to the testimony of our witnesses here today and to an expedited mark-up schedule so that we can move this legislation to the full committee and to the House floor this year.

Thank you, Mr. Chairman.

Mr. FRANK. Thank you, Mr. Shaw. Yes, to respond, we are going to have an expedited schedule. This is a jointly referred bill. Part of it is entirely in our jurisdiction and part of it we share with the Ways and Means Committee. My inclination would be that we would divide it into two bills and approve both of them, so that the part that is entirely within our jurisdiction could just go its way and set a good example for the Ways and Means Committee, which we would hope would follow very quickly. And I expect that we will be able to mark-up, depending on the schedule and when we can get a quorum, no later than two weeks from today, people should know, and we will ask people to focus. I say that because, if any points are raised during the hearing that you think need amplification and clarification, we will be eager to get them right away.

Our first witness is one of our colleagues who has been an extraordinarily diligent leader in this field. From his position on the Foreign Affairs Committee, he helped give us a push and he has done an enormous amount to move us along. We are delighted to have our colleague, the gentleman from California, Mr. Lantos, a prime sponsor of the legislation, before us.

Mr. Lantos.

#### TESTIMONY OF THE HONORABLE TOM LANTOS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LANTOS. Thank you very much, Mr. Chairman. You will forgive me if I deviate from your instructions and thank you and members of your subcommittee for holding this hearing as expeditiously as you have, and also thank Chairman Rodino for his commitment to move on this legislation. I also want to express my appreciation at the outset to two members of my staff, Ms. Lisa Phillips and Ms. Celia Boddington, who did the bulk of the work on this legislation.

This is a great opportunity for me to speak in support of my legislation, H.R. 2673, which is designed to implement the 1980 Hague Convention on the Civil Aspect of International Child Abduction. I believe, Mr. Chairman, that passage of the International Child Abduction Act is long overdue. Congress has already recognized the problem of child abduction, in October, 1986, when the Senate unanimously ratified the Hague Convention. However, as you know, Federal implementing legislation is required before the United States can join the growing community of nations which recognize the need to bring abducted children home.

Last year, the Senate approved this legislation as part of the Department of State Authorization Bill. During conference negotiations last fall a number of technical problems were discussed and, as the sponsor of the bill, I invite you, Mr. Chairman, and your colleagues to make whatever technical amendments you deem appropriate to ensure that provisions in the bill for international abduction cases match both the resources as well as the restrictions currently in law for domestic interstate child abduction cases.

Other witnesses will describe the painful, long and difficult fights by parents to trace their children who have been abducted across international boundaries in violation of valid custody orders. Often, having found the children, these parents then experience the frustration, the anguish, the nightmare of being unable to regain custody and often even to see their child. Foreign courts, as you know, typically, do not recognize U.S. custody agreements so, at present, the custodial parent has very little recourse.

The 1980 Hague Convention will assist these parents. It establishes a system of administrative and legal procedures designed to ensure the prompt return of abducted children. It applies to abductions both before and after the custodial decree is issued and also applies to joint custodians. The Hague Convention does not recognize any foreign custody order but requires, in effect, the restoration of the status of the child prior to the abduction.

The ratifying countries currently include the United Kingdom, France, Portugal, Switzerland, Hungary, and Canada. Each year more countries are acknowledging the problem of international child abduction and are ratifying the treaty. This year alone most of the West European nations are poised to sign the treaty and some, in effect, are waiting for U.S. participation.

I might mention parenthetically, Mr. Chairman, that as chairman of the U.S. Congressional Delegation to the European Parliament, I had occasion last month to discuss this issue with a very large number of European parliamentarians from 12 nations, and there is widespread support for this legislation. I believe that the United States must add its voice to the international community and act without delay to ratify the Hague Convention.

The International Child Abduction Act is the critical last step toward ratification of the Hague Conventions. This implementing legislation designates the appropriate Government agencies at the Federal, State and local levels which will be in charge of administering the treaty provisions in the United States. It also establishes guidelines for the procedures to be adopted by these agencies.

Our Department of State estimates, Mr. Chairman, that there are more than 3,500 children who are United States citizens who

have been taken to other nations by a non-custodial parent, and there are clear signs that abductions are on the increase. Yet we can take steps now to reduce the scope of the problem by ratifying the Hague Convention. In the past few years nearly half of all requests received by the State Department for assistance in parental kidnappings have involved abductions to countries which participated in the preparation and negotiation of the Hague Convention.

The International Child Abduction Act has strong bipartisan support and the full backing of the Administration. Congress has already acknowledged the problem of parental kidnapping, both here and abroad. Passage of H.R. 2673 is the only logical step to bring our works and our actions into harmony. Implementation of the Hague convention is a humane and appropriate response to the growing tragedy of international child abduction. I urge your support in this effort. And I want to thank you and your colleagues for your attention.

Mr. FRANK. Thank you, Mr. Lantos. And let me particularly note the graciousness of your acknowledgment of my staff. We do that too little. We are dependent on them and don't often enough mention that fact.

I have no questions because we are so much in agreement.

Mr. Shaw?

Mr. SHAW. No questions, Mr. Chairman.

Mr. LANTOS. Thank you very much.

Mr. FRANK. Thank you. And we will be back to you as we work on this.

Mr. FRANK. Next, we have a panel representing the Government officials here, Department of State, Mr. Pfund, who is Assistant Legal Adviser for Private International Law; and from the Department of Justice, Mr. Markman, Assistant Attorney General for Legal Policy.

Mr. Pfund, we will start with you.

**TESTIMONY OF PETER H. PFUND, ASSISTANT LEGAL ADVISER  
FOR PRIVATE INTERNATIONAL LAW, DEPARTMENT OF STATE;  
AND STEPHEN J. MARKMAN, ASSISTANT ATTORNEY GENERAL  
FOR LEGAL POLICY, DEPARTMENT OF JUSTICE**

Mr. PFUND. Thank you, Mr. Chairman.

Mr. Chairman, I very much appreciate the scheduling of this hearing so early during this session and the opportunity to testify before the committee on behalf of the State Department in support of early passage of this bill. Congressional enactment will make possible U.S. ratification of the 1980 Hague Convention on the Civil Aspects of International Child Abduction pursuant to the advice and consent to ratification already given by the Senate on October 9, 1986.

Until the Hague convention enters into force for the United States, the Department will regrettably continue to be very limited in what it can do abroad to help resolve the abductions to, or wrongful retentions in, foreign countries of children from the United States in custody-related disputes. In considering the limits on what U.S. authorities can do in a foreign country, it is useful to bear in mind the limits to which we expect foreign officials in this



country to restrict their activities in seeking to effect the return to their country of children that may have been abducted to or retained in the United States.

The Hague Convention would establish a new treaty-governed procedure between the United States and other countries parties to the Convention, designed to effect the prompt return of abducted or wrongfully retained children. We believe that the Convention will give left-behind parents in the United States a powerful legal tool in their efforts promptly to regain custody of children wrongfully removed from the United States.

In order to give left-behind parents a single official place to turn for help, the Convention provides for the establishment of national Central Authorities in each country, responsible for receiving and processing return requests made pursuant to the Convention. Upon application by a left-behind parent to the Central authority of the country where the child is believed to be located, and subject only to the conditions set out in the Convention and exceptions specified in it, an abducted child is to be promptly returned, essentially restoring the status quo before the abduction or retention took place. The U.S. Central Authority, to be located in and staffed by the State Department's Bureau of Consular Affairs, will be available to counsel left-behind parents in the United States on how best to seek the return of children to this country pursuant to the Hague Convention. It will also receive and process requests for the return of children from the United States and will arrange for the essential cooperation of State and local authorities in U.S. jurisdictions where such children are located.

The nine countries already parties to the Convention are countries to which one out of five or six of the approximately 300 affected children from the United States are annually taken. We are informed that six further Western European countries expect to become parties to the Convention during the next two years. There is thus reason for hope that many children facing abduction to these countries will be returned and that the Convention will eventually become an effective deterrent to the abduction of children involving these countries.

We need Federal legislation to be able best to meet our obligations under the Convention with regard to children taken to or retained in the United States. The Administration-cleared bill before you, introduced and co-sponsored by Congressmen Gilman and Lantos, was prepared by the State Department in consultation with the Departments of Justice and Health and Human Services, but also in close consultation over several years with a study group of distinguished family law experts from the private legal sector. That group included State officials, practicing lawyers, law professors and association representatives. These experts and members of the Secretary of State's Advisory Committee on Private International Law, who represent 11 national legal organizations, believed that Federal legislation was needed smoothly to fit the Convention into our legal system. Unlike other countries that participated in the negotiation of the Hague Convention, the United States is made up of more than 50 different jurisdictions and has parallel Federal and State court systems. This will confront the left-behind parent abroad wishing to invoke the Convention here with problems they

do not face in other countries. We have sought in the legislation to anticipate some of the problems that left-behind parents seeking the return of children from the United States might encounter. In the absence of Federal legislation, those problems might be resolved only after costly litigation and appeals that would delay action on many child return requests arising in the first years after our ratification and may cast doubt on the viability of the Convention itself. That, in turn, could detract from early perception of the Convention as an effective deterrent to international child abductions.

The Federal legislation seeks to intrude as little as possible on relevant aspects of State law and procedure. However, courts and various Federal and State authorities and agencies will be involved in the implementation of the treaty obligations of the United States vis-a-vis other countries parties to the Convention. The legislation therefore seeks to set certain implementation standards in the interest of uniform interpretation and implementation of the Convention throughout the United States. In addition to the Federal legislation designed to promote such uniformity, the State Department transmitted to the Chairman of the Senate Committee on Foreign Relations a very detailed analysis of the Convention when that committee was considering it. That legal analysis was published by a State Department notice in the Federal Register of March 26, 1986, and by the Senate Committee on Foreign Relations in Executive Report 99-25. We recommend that this committee make the legal analysis a part of the record of its consideration of H.R. 2673 to promote awareness of the legal analysis by courts and authorities and the public in the United States.

I have a copy of that here and could leave it with you.

Mr. FRANK. Well, I appreciate it and we will accept it. But I think, frankly, going to the trouble and expense of having it printed is probably not a good idea. It will be available, but I wouldn't think it would be necessary for us to have it reprinted if it is available. We can reference in our hearing record where it can be made available elsewhere. But I think we can save on the printing costs if we don't print it.

Mr. PFUND. Let me highlight a few of the specific provisions of the bill. I won't do all of those that I think interest you but the two I would like most to discuss.

Subsection (a) of Section 102 provides that Federal district courts and State, District of Columbia or territorial courts or courts in possessions of the United States have concurrent original jurisdiction to decide cases brought before them pursuant to the Convention.

Since the Administration cleared off on the draft of the International Child Abduction Act early in 1987, Executive Order 12612 on Federalism was issued on October 26, 1987. That executive order demonstrates a strong Administration policy with regard to the appropriate roles and relationship of the Federal Government and the State governments. As a result of that executive order and that strong policy, best explained, perhaps, by the Justice Department, the Administration no longer favors concurrent original Federal court jurisdiction to hear return requests pursuant to the Convention. I should state, however, that consistent with section 2 of Arti-

cle III of the Constitution on the jurisdiction of the Federal courts with regard to treaties made, and Title 28, U.S. Code, Section 1331, the changed Administration policy in connection with H.R. 2673 is limited to original Federal court jurisdiction to hear return requests.

Subsection (d) of section 102 makes clear that the courts are to order the prompt return of a child when the parent seeking its return under the Convention establishes by a preponderance of the evidence that the child has been wrongfully removed or retained.—

Mr. FRANK. Mr. Pfund, I don't think there is any necessity to tell us exactly what is in the bill. We will read it. If you have arguments in its behalf, OK. But there is no need to read the text.

Mr. PFUND. This is a little different from the written testimony and I would much—

Mr. FRANK. It is not necessary to tell us what is exactly in the bill.

Mr. PFUND. No. OK.

It proposes a preponderance of the evidence on the petitioner seeking the return to establish that the removal or retention were wrongful within the meaning of the Convention. The point I want to make is that the respondent, that is, the parent alleged to have abducted or wrongfully retained the child, can rebut this evidence by a mere preponderance of the evidence. However, if the respondent wishes to invoke one of the Convention's exceptions to the return obligation, somewhat in the nature of an affirmative defense—

Mr. FRANK. Mr. Pfund, that is very clearly in the bill.

Mr. PFUND. Yes.

Mr. FRANK. Assume we can read the bill or have read it. If you want to make arguments on its behalf, that is useful.

Mr. FRANK. But we will read the bill.

Mr. PFUND. Well, the section is intended to ensure that the exceptions to the Convention's return obligation are, in fact, treated as exceptions and are sufficiently hard to demonstrate that their use, interpretation and application do not become so broad as to undermine the very purpose of the Convention. Frequent successful invocation of the exceptions in the United States, based on broad interpretation of their terms, in order to deny return requests could have the general effect abroad of encouraging corresponding denials of requests under the Convention for the return of children to the United States.

I would like to close by strongly urging on behalf of the State Department that the House and Senate pass this bill without delay so that the United States can ratify the Hague Convention. We urge, in particular, that the bill be passed soon enough to permit us to ratify so that the Convention's entry into force for the United States two to three months after we deposit that instrument of ratification will mean that some of the children affected by the annual surge of international abductions and retentions towards the end of summer will be covered by the Convention. That might make possible the return of a number of those children to the United States before the end of this year.

Mr. FRANK. I can guarantee you that, given the interest the Senate has already shown, you will have this on the President's desk well in advance of the time that it will be necessary to cover the end of the summer. Thank you.

Mr. PFUND. Thank you.

[The statement of Mr. Pfund follows:]

WRITTEN TESTIMONY OF  
PETER H. PFUND  
ASSISTANT LEGAL ADVISER FOR  
PRIVATE INTERNATIONAL LAW

DEPARTMENT OF STATE

HOUSE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS

FEBRUARY 3, 1988

I very much appreciate the scheduling of this hearing so early during this session and the opportunity to testify before this Committee on behalf of the State Department in support of early enactment of H.R. 2673 and its companion bill, S. 1347. Congressional enactment will make it possible for the United States to ratify the 1980 Hague Convention on the Civil Aspects of International Child Abduction pursuant to the advice and consent given by the Senate on October 9, 1986.

Until the Hague Convention enters into force for the United States, the Department will continue to be very limited in what it can do to help resolve the abduction to, or wrongful retention in, foreign countries in custody-related disputes of children from the United States. The Hague Convention would establish a treaty-governed procedure for the prompt return of abducted or wrongfully retained children between the United States and other countries that are or become parties to the Convention. We believe that the Convention will arm left-behind parents in the United States with a powerful tool in their efforts promptly to regain custody of children that have been wrongfully removed from to the United States.

In order to give left-behind parents a single official place to turn for help, the Convention provides for contracting states to establish a national Central Authority responsible for receiving and processing return requests made pursuant to the Convention. Upon application by a left-behind parent to the Central Authority of the country where the child is believed to be located, and subject only to the conditions and exceptions set out in the Convention, a wrongfully removed or retained child is to be promptly returned to the country of its habitual residence, thereby essentially restoring the status quo before the abduction or retention took place. The U.S. Central Authority, to be located in the State Department's Bureau of Consular Affairs, will be available to counsel left-behind parents in the United States on how best to seek the return of children from other countries party to the Convention. It will also receive and process requests for the return of children from the United States with the necessary cooperation of State and local authorities in the jurisdictions where such children are located in the United States.

The nine countries already parties to the Convention (Australia, Canada, France, Hungary, Luxembourg, Portugal, Spain, Switzerland and the UK) are countries to which one out of five or six of the approximately 300 children from the United States abducted or retained abroad annually are taken.

- 2 -

We are informed that Austria, the Federal Republic of Germany, Greece, Italy, the Netherlands and Sweden expect to become parties to the Convention during the next two years. Other countries are expected to follow. There is thus reason for hope that the Convention will become a serious deterrent to the abduction of children to or from those countries. Moreover, a growing percentage of all abductions from the United States will be covered by the return obligation established by the Convention.

We need federal legislation to be able effectively to meet our obligations under the Convention with regard to children allegedly wrongfully removed to or retained in the United States. The Administration bill before you, introduced and co-sponsored by Congressmen Gilman and Lantos as H.R. 2673, was prepared by the State Department in consultation with the Departments of Justice and Health and Human Services, but also in close consultation over several years with a study group of distinguished family law experts from the private legal sector, including State officials, practicing lawyers, law professors and association representatives. These experts are familiar with the international child abduction problem, the provisions of the Hague Convention and relevant aspects of U.S. law and procedure. The bill seeks, on the one hand, to ensure that the US Central Authority, courts in the United States, and federal, State and local authorities are best able to use resources in this country to meet the requirements of the Convention in processing such return requests. On the other hand, it seeks to provide left-behind parents, i.e., parents whose child has been abducted or wrongfully retained, and their counsel guidance on how the Convention may be invoked in seeking the return of a child from the United States.

The Members of the Secretary of State's Advisory Committee on Private International Law, who represent eleven national legal organizations interested in the international unification of private law to facilitate international legal relationships and transactions, strongly believed that federal legislation was needed smoothly to fit the Convention into our legal system and procedures. We have sought in the legislation in particular to anticipate some of the problems that left-behind parents seeking the return of children from the United States pursuant to the Convention might encounter. In the absence of federal legislation, those problems might be resolved only after costly litigation and appeals that would delay action on many return requests arising in the first years after our ratification and would cast doubt on the viability of the

Convention. That, in turn, would detract from early perception of the Convention as an effective deterrent to international child abductions. Unlike many other countries that participated in the negotiation of the Hague Convention, the United States is made up of more than fifty different jurisdictions and has parallel federal and State court systems. This confronts left-behind parents abroad wishing to invoke the Convention with problems they do not face in other countries. Moreover, there will be considerable need for the U.S. Central Authority to rely on State and local authorities, for example to locate abducted children in the United States, in some cases to explore the possibility of their voluntary return, and to provide possible foster care for such children.

State procedures concerning notice of a return action to the alleged abducting or wrongfully retaining parent, and State requirements for determining whether a child is to be provisionally removed from a person having physical control over it while a return action is pending, will be applicable. The federal legislation seeks to intrude as little as possible on relevant aspects of State law and procedure. However, because courts and authorities will be involved in the implementation of treaty obligations of the United States vis-a-vis other countries parties to the Convention, the legislation seeks to set certain implementation standards in the interest of uniform interpretation and implementation of the Convention throughout the United States. The legislation is the second way in which we have sought to enhance the likelihood of such uniformity -- the first being the very detailed legal analysis of the Convention that was transmitted by the State Department to the Chairman of the Senate Committee on Foreign Relations in connection with that Committee's consideration of the Convention. That legal analysis was published by State Department notice in the Federal Register of March 26, 1986 at pages 10494-10516, and by the Senate Committee on Foreign Relations in Executive Report 99-25 on the Convention. We recommend that this Committee make the legal analysis a part of the record of its consideration of H.R. 2673 to promote awareness of it and to help ensure the availability of the legal analysis to the public, courts and authorities in the U.S.

I would like now to turn to the specific provisions of the bill that may benefit from explanation.



## Section 2. Findings and Declaration of Purposes.

This section states certain principles basic to the Convention and its implementation and describes in general terms the relationship of the Act to the Convention, the effective implementation of which the Act is designed to ensure and facilitate. Subsection (6) makes clear that the provisions of the legislation are in addition to those of the Convention and are not designed to operate in their stead. Subsection (7) contains an admonition that the international character of the Convention is to be taken into consideration as is the need for uniformity in its interpretation. Subsection (8) makes clear that procedures undertaken by the courts under the Convention and the Act are not aimed at judging and deciding on the merits of conflicting custody claims that underlie the wrongful abduction or retention, and thus that such claims remain for resolution after the Convention procedures have been concluded.

## TITLE I Provisions Implementing the Convention Section 101. Definitions.

This section defines terms used in the Act and the Convention the interpretation of which is not self-explanatory in the context of the U.S. legal system. The definition of "court" in subsection (3), together with section 102(a) and (b), specifies that the courts of original jurisdiction to determine whether a child is to be ordered returned pursuant to the Convention are courts within the jurisdiction of which a child covered by the Convention is located at the time the return petition is filed. Subsection (11) specifies that wrongful removal or retention within the meaning of the Convention may include a removal or retention even when the child has not yet become the subject of a custody order, *i.e.*, notwithstanding that the law of the State or other U.S. jurisdiction in which the child is located may not make the taking or retention in such circumstances a felony or otherwise wrongful. Subsection (12) provides that the filing of a petition in accordance with section 102(b) of the Act shall constitute "commencement of the proceedings" within the meaning of article 12 of the Convention. Under article 12, so long as the commencement of proceedings takes place less than one year after the wrongful removal or retention, the judicial or administrative authority is to order the return of the child forthwith and without regard for any demonstration that the child may have become settled in its new environment.

Section 102. Administrative and Judicial Remedies.

Subsection (a) provides that Federal district courts and State, District of Columbia or territorial courts or courts in possessions of the United States have concurrent original jurisdiction to decide cases brought before them pursuant to the Convention.

Subsection (b) concerning venue expressly provides that a person seeking relief under the Convention has a civil cause of action in a court in the jurisdiction of which the child is located at the time the petition is filed. Subsection (c) provides that notice of a return action under the Convention and the Act is to be given in accordance with the applicable State or other law governing notice in interstate child custody cases. This will provide necessary guidance for notice, for example when the return action is brought in the U.S. jurisdiction where the child is located and the respondent is located in another jurisdiction.

Subsection (d) makes clear that the courts are to order the prompt return of a child when the parent seeking its return under the Convention establishes by a preponderance of the evidence that the child has been wrongfully removed or retained within the meaning of the Convention. The respondent, on the other hand, must then demonstrate by clear and convincing evidence that one of the exceptions provided by the Convention applies, i.e., the respondent must meet a higher burden of proof in order to provide the legal basis for a finding that the return obligation of the Convention does not apply and that the return of the child may be refused. This provision seeks to help the left-behind parent to overcome what is often a home-court advantage of the other parent in the country of that parent's origin. It is intended to ensure that the exceptions to the Convention's return obligation are sufficiently hard to demonstrate so that their interpretation and application does not become so broad as to provide a precedent in the United States that could undermine the purpose of the Convention and could have the effect abroad of providing a basis for refusal to return children to the United States.

Subsection (e) provides that full faith and credit shall be accorded throughout the United States to judgments and orders of courts in the United States rendered with regard to return actions pursuant to the Convention and the Act. This means, for example, that if a court in one jurisdiction has ordered the return of a child and the child is located in another jurisdiction in the United States before action on that return order has taken place, the order will be given full effect in the second jurisdiction without the need for the petitioning parent to initiate and maintain a new return action there pursuant to the Convention and the Act. It also means that if the return request has been denied, the court's decision will be recognized by courts in other jurisdictions. However, the provision is not intended to deny the possibility of appeal from, or some other procedure to question, a return order or a decision denying a return order.

Subsection (f) makes clear that the remedies under the Convention and the Act are in addition to remedies otherwise available, and are not intended to replace or exclude other available remedies that exist or may be established under law in the United States (e.g., the Uniform Child Custody Jurisdiction Act (UCCJA)).

#### Section 103. Provisional Remedies.

This section provides that any court may take or cause to be taken provisional measures under State or Federal law, as appropriate, to protect the child from neglect or abuse or to prevent its removal from the jurisdiction or its concealment, while the petition filed pursuant to the Convention and this Act is pending. However, the requirements and standards of the law of the jurisdiction where the child is located concerning removal of a child from the physical custody of a person having such custody must be satisfied.

#### Section 104. Admissibility of Documents.

This section tracks the provisions and requirements of Articles 23 and 30 of the Hague Convention. Article 23 provides that no legalization or similar formality may be required in the context of the Convention. Article 30 requires that applications to Central Authorities or directly to judicial or administrative authorities, together with documents and any other information appended thereto or provided by a Central Authorities, be admissible in the courts or administrative authority of Contracting States. Section 104

seeks to ensure that an application for assistance addressed to the U.S. Central Authority and a petition to a court in an action pursuant to the Convention and the Act, and documents and information appended thereto, do not require costly and time-consuming legalization or authentication to be admissible, which could result in undesirable delays in return of children. The purpose of Articles 23 and 30 of the Convention is to spare the left-behind parent the expense of formal procedures that are not essential in most cases. These Articles of the Convention and Section 104 do not address the question of the weight to be accorded to such documents and do not mean that if there is a specific allegation or reason to believe that supporting documents are false or have been altered, the authenticity of those documents cannot be questioned. They also do not mean that in such circumstances the court or other authority would be barred from requiring the submission of authenticated and legalized copies of the questioned documents and possibly other evidence to support their authenticity.

#### Section 105. U.S. Central Authority.

Subsection (a) provides for the establishment of the U.S. Central Authority in an existing Federal agency. Subsection (b) makes clear that the functions of the Central Authority ascribed to it by the Convention and the Act are to be carried out by the U.S. Central Authority with the necessary cooperation of State and local authorities and agencies on which the U.S. Central Authority will need to rely in the performance of these functions. These functions may include the provision of home studies for foreign authorities and courts considering a request for the return of an abducted child to the United States. The administrative burden on State and local authorities will be the complement to the benefits provided to left-behind parents in the United States by the return of children to those jurisdictions through operation of the Convention. Subsection (c) expressly authorizes the U.S. Central Authority to issue regulations in connection with the implementation of the Convention and the Act. Subsection (d) makes reference to authority for the U.S. Central Authority to make use of the services of the Federal Parent Locator Service (FPLS), which authority is provided in the Social Security Act as amended by Section 201 of this Act.

#### Section 106. Costs and Fees.

Subsection (a) ensures, consistent with the obligation in the first paragraph of Article 26 of the Convention, that none of the costs for the administrative processing of applications under the Convention are imposed on the applicant by the U.S. Central Authority, any Federal agency, or cooperating State or local authorities. Subsection (b) provides that petitioners may be required to bear the costs of legal counsel or advisers, and court costs in connection with their petitions, and travel costs associated with the return of a child. This is consistent with the State Department's proposal that the United States ratify the Convention subject to a reservation, permitted by article 42, to be made by declaration at the time of ratification, that the United States will not be bound to assume any costs referred to in the second paragraph of article 26 resulting from the participation of legal counsel or advisers or from court proceedings. Senate advice and consent to U.S. ratification of the Convention, given on October 9, 1986, was made subject to the making of that reservation. Subsection (c) provides that legal fees and court costs not covered by Federal, State or local legal assistance or other programs are to be borne by the petitioner, but subject to subsection (d). Subsection (d), reflecting the provisions of the last paragraph of article 26 of the Convention, provides that a court ordering the return of a child shall order the respondent to pay specified necessary expenses incurred by or on behalf of the petitioner unless the respondent establishes that to do so would be clearly inappropriate. This provision of the Act and the provisions of article 26 that it reflects were intended to provide an additional deterrent to wrongful international child removals and retentions.

#### Section 107. Collection, Maintenance and Dissemination of Information.

Subsection (a) provides for the exemption of the U.S. Central Authority, in pursuance of its functions under the Convention, from the application of Federal and State privacy legislation or regulations, in order to permit the Central Authority flexible use of information obtained related to the location or possible location of the alleged abducting parent and the abducted child, although subject to the stated exceptions with regard to national security or law enforcement interests or the confidentiality of census data. Subsection (b) permits the U.S. Central Authority by regulation to

prescribe how and subject to what exceptions requests for information by left-behind parents abroad shall be submitted to it and at supporting documents may be required. Subsection (c) stipulates how and subject to what exceptions requests for information directly from the U.S. Central Authority will be handled and responded to by Federal agencies and organs of any State, territory or possession of the United States. Subsection (d) ensures that the U.S. Central Authority will make use of the services of the Federal Parent Locator Service (FPLS) when information that may be in the control of a Federal Agency can be obtained through the FPLS rather than by requesting such information directly. Subsection (e) provides that nothing in this section shall be construed as permitting the Central Authority directly to obtain tax return information except as provided in section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103) and section 453 of the Social Security Act (42 U.S.C. 653). Subsection (f) requires that the Central Authority maintain appropriate records concerning its functions and the disposition of cases arising under the Convention.

#### Section 108. Inter-Agency Coordinating Group.

This section provides for the establishment of a coordinating group to monitor operation of the Convention and provide advice on its implementation in the United States, that shall include representatives of the Departments of State, Justice, and Health and Human Services, and that may also include private citizens. Such private citizens would be experts in family law and other aspects of law and procedure relevant to child abductions. The coordinating group is to meet at the request of the U.S. Central Authority and is to be exempt from the Federal Advisory Committee Act.

#### Section 109. Authorization of Appropriation.

This section, as a precaution, authorizes the appropriation of such sums as may be necessary each fiscal year to carry out the purposes of the Convention and this Act. The purpose of this section is to provide for the contingency that funds may be needed. However, there is no intention to seek the appropriation of any funds for the foreseeable future because there is at present no reliable basis for determining the numbers of return requests arising under the Convention and the administrative costs involved at various levels in the processing of requests, which will vary from case to case and

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may vary from jurisdiction to jurisdiction. The necessary statistics and figures could be developed only after several years of implementation of the Convention.

## TITLE II Amendments to Other Laws

### Section 201. Amendment Concerning Federal Parent Locator Service.

This section ensures, by amending the provision of the Social Security Act establishing the Federal Parent Locator Service (FPLS) and the financial conditions for its use, that the services of the FPLS will be accessible to the U.S. Central Authority to provide information needed in connection with efforts to determine the whereabouts of any parent or child for the purposes of the Convention, and that no fee for use of the FPLS is charged against the Central Authority, the applicant or anyone else inconsistent with the first paragraph of article 26 of the Convention and section 106(a) of this Act.

### Section 202. Amendment to the Internal Revenue Code of 1986.

This section makes a conforming amendment to section 6103(l)(6) of the Internal Revenue Code of 1986, to authorize the release of tax return information for purposes of, and to the extent necessary in, efforts to locate individuals in connection with the abduction or wrongful restraint or retention of a child.

The Department of State strongly urges that the House and Senate pass this bill without delay so that the United States will be able to ratify the Hague International Child Abduction Convention. We would, in particular, urge that the bill be passed soon enough to permit us to ratify so that the Convention's entry into force for the United States 2-3 months later will permit the usual annual surge of international abductions and retentions of children toward the end of summer to be covered by it when other countries party to the Convention are involved. It would then be possible that a number of those children would be returned to the United States pursuant to the Convention by the end of 1988.

Mr. FRANK. Mr. Markman.

Mr. MARKMAN. Thank you, Mr. Chairman.

Although the Department strongly supports this bill as implementing the laudable objectives of the Convention, we cannot support the bill's establishment of concurrent jurisdiction in the State and Federal courts to hear claims under the Convention and the bill. In this respect, the bill represents a sharp departure from longstanding policy, based on principles of Federalism, of excluding domestic relations matters from the Federal courts and leaving the resolution of these sensitive issues entirely to the courts of the States.

For example, the diversity jurisdiction of the Federal courts has, for well over a century, been interpreted to exclude domestic relations matters. That exception rests on the principle, in the Supreme Court's words, that "the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States." Even when a Federal question is presented, the courts have declined to hear disputes that would deeply involve them in resolving domestic relations disputes.

Similarly, when it enacted the Parental Kidnapping Prevention Act of 1980 to address the issue of the interstate abductions of children in custody-related disputes, Congress did not create a private cause of action in the Federal courts to enforce that Act, but left it to the State courts to enforce the Act's standards, subject to review by the Supreme Court under full faith and credit principles. As the Supreme Court stated in unanimously affirming this interpretation of the Act only last month in the case of *Thompson v. Thompson*, "instructing the Federal courts to play Solomon where two States have issued conflicting custody orders would entangle them in traditional State law questions that they have little expertise to resolve."

Establishing concurrent jurisdiction in the Federal courts of claims under the 1980 Hague Convention and the bill would similarly enmesh them in the types of domestic relations matters that Federal courts have never handled. For instance, under the Convention, if the proceeding for return of a child is brought a year or more after a wrongful removal or retention, return is not required if the "child is now settled in its new environment" (Article 12). Similarly, return is not required if "there is great risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." Moreover, return may be refused if the child objects and "has attained the age and degree of maturity at which it is appropriate to take account of its views." (Article 13).

These and others, Mr. Chairman, are all questions that go to the heart of traditional domestic relations matters. The fact that in this case the standards are based on the Convention, and not directly on State law, does not alter the fact that these inquiries are of a character never handled by Federal courts, just as Congress and the Supreme Court recognized that the similar Federal standards under the Parental Kidnapping Prevention Act were also in the nature of traditional domestic relations inquiries best handled exclusively by the State courts.



In fact, the provisions of H.R. 2673 in a number of respects are even more inextricably intertwined with traditional State law matters than was the Parental Kidnapping Prevention Act. For example, under section 103 of the bill Federal courts would be authorized "to take . . . provisional measures under Federal or State law, as appropriate, to protect the well-being of a child." The bill also forbids the provisional removal of a child from his or her custodian "unless the applicable requirements of State law are satisfied. And further, it appears that to effect such provisional remedies as temporary foster care, the Federal courts would be required to make arrangements with State and local authorities.

Accordingly, Mr. Chairman, we strongly recommend the passage of this bill. At the same time, we also recommend equally strongly that the bill be amended to eliminate the concurrent jurisdiction therein.

[The statement of Mr. Markman follows:]



# Department of Justice

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STATEMENT

OF

STEPHEN J. MARKMAN  
ASSISTANT ATTORNEY GENERAL  
OFFICE OF LEGAL POLICY

BEFORE

THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND  
GOVERNMENTAL RELATIONS  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 2673 - INTERNATIONAL CHILD ABDUCTION ACT

ON

FEBRUARY 3, 1988

Mr. Chairman and members of the Subcommittee:

I am pleased to appear before you to present the views of the Department of Justice with respect to H.R. 2673, the "International Child Abduction Act." The bill is intended to facilitate implementation in the United States of the 1980 Hague Convention on the Civil Aspects of International Abduction. That Convention addresses the issue of international abductions of children in custody-related disputes and requires the prompt return of children who have been wrongfully removed from or retained outside of their country of habitual residence. The objective of the Convention is to restore promptly the situation that existed before the child's removal or retention in order to deny the abductor any legal advantage in the country to which the child has been wrongfully removed or retained. The Convention establishes a legal right and streamlined procedures to effect the prompt return of internationally abducted children to the country of their habitual residence where any custody disputes can be heard or settled. The Convention also seeks to facilitate visitation rights across international borders.

Although the Department generally supports the bill as implementing the laudable objectives of the Convention, we cannot support the bill's establishment of concurrent jurisdiction in the state and federal courts to hear claims under the Convention and the bill. In this respect, the bill represents a sharp departure from the longstanding policy, based on principles of federalism, of excluding domestic relations matters from the federal courts and leaving the resolution of those sensitive issues entirely to the courts of the states.

For example, the diversity jurisdiction of the federal courts has, for well over a century, been interpreted to exclude domestic relations matters. <sup>1/</sup> That exception rests on the principle, in the Supreme Court's words, that "the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states." <sup>2/</sup> Even when a federal question is presented, the courts have declined to hear disputes that would deeply involve them in resolving domestic relations disputes. <sup>3/</sup>

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<sup>1/</sup> E.g., In re Burrus, 136 U.S. 586, 593-94 (1890); Barber v. Barber, 62 U.S. (21 How.) 582 (1859).

<sup>2/</sup> In re Burrus, *supra*, 136 U.S. at 593-94.

<sup>3/</sup> See Thompson v. Thompson, 798 F.2d 1547, 1558 (9th Cir. 1986), *aff'd*, 56 U.S.L.W. 4055 (U.S. Jan. 12, 1988); Firestone v. Cleveland Trust Co., 654 F.2d 1212, 1215 (6th Cir. 1980); Bergstrom v. Bergstrom, 623 F.2d 517, 520 (8th Cir. 1980).

Similarly, when it enacted the Parental Kidnapping Prevention Act of 1980 (the "PKPA") to address the issue of interstate abductions of children in custody-related disputes, Congress did not create a private cause of action in the federal courts to enforce the Act, but left it to the state courts to enforce the Act's standards, subject to review by the Supreme Court under Full Faith and Credit principles. As the Supreme Court stated in unanimously affirming this interpretation of the Act last month, "instructing the federal courts to play Solomon where two states have issued conflicting custody orders would entangle them in traditional state-law questions that they have little expertise to resolve." <sup>4/</sup>

The Supreme Court rejected the argument that determining which of two conflicting custody decrees should be given effect would not require resolution of the underlying custody disputes and thus not offend the longstanding reservation of domestic relations law to the states. It noted that, under the Act, jurisdiction could turn on the "best interest" c. the child or whether the child had been abandoned or abused. "In fact," the Court found, "it would seem that the jurisdictional disputes that are sufficiently complicated as to have provoked conflicting state-court holdings are the most likely to require resolution of these traditional domestic relations inquiries." <sup>5/</sup>

Establishing concurrent jurisdiction in the federal courts of claims under the 1980 Hague Convention and the bill would similarly enmesh them in the types of domestic relations matters that federal courts have never handled. For instance, under the Convention, if the proceeding for return of a child is brought a year or more after a wrongful removal or retention, return is not required if the "child is now settled in its new environment" (Article 12). Similarly, return is not required if "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation" (Article 13). Moreover, return may be refused if the child objects and "has attained the age and degree of maturity at which it is appropriate to take account of its views" (Article 13), or if it "would not be permitted by this fundamental principles of the requested state relating to the protection of human rights and fundamental freedoms" (Article 20).

These are all questions that go to the heart of traditional domestic relations matters. The fact that in this case the standards are based on the Convention, and not directly on state

<sup>4/</sup> Thompson v. Thompson, 56 U.S.L.W. 4055, 4059 (U.S. Jan. 12, 1988).

<sup>5/</sup> Id. n.4.

law, does not alter the fact that these inquiries are of the character never handled by federal courts, just as Congress and the Supreme Court recognized that the similar federal standards under the Parental Kidnapping Prevention Act were also in the nature of traditional domestic relations inquiries best handled exclusively by the state courts.

In fact, the provisions of H.R. 2673, implementing the 1980 Hague Convention, are even more inextricably intertwined with traditional state law matters than was the PKPA. Under section 103 of the bill, federal courts would be authorized "to take . . . provisional measures under Federal or State law, as appropriate, to protect the well-being of a child or to prevent the child's further removal or concealment prior to final disposition of the petition." The bill forbids the provisional removal of a child from his or her custodian "unless the applicable requirements of state law are satisfied," deeply enmeshing the federal courts in state domestic relations law. Further, it appears that to effect such provisional remedies as temporary foster care, the federal courts would be required to make arrangements with state and local authorities, entangling the federal courts in the state and local government agencies and procedures regulating domestic relations.

Apart from our concern over the intrusion of the federal courts into a traditional state preserve, we are also concerned about the potential increased burden on the federal courts. At a time when many district courts face intolerable backlogs, it would be inappropriate to add to their caseload without a compelling reason. We do not believe that there is justification for burdening the federal courts with claims under the Convention and the bill. As I have explained, the federal courts can bring no peculiar expertise to bear on these questions that state courts have historically handled and, in fact, the state courts are far better suited for them.

Accordingly, we recommend that the bill be amended to eliminate the concurrent jurisdiction of the federal courts over matters under the Convention and the bill.

H.R. 2673 also would empower the Central Authority established by the bill to receive and transmit information, notwithstanding the Privacy Act, 5 U.S.C. § 552a, for purposes related to the Convention. The Central Authority may not, however, disclose, and agencies are not required to transmit to the Central Authority, information the disclosure of which would contravene the national security or law enforcement interests of the United States or the confidentiality of census data. To clarify that the law enforcement interests of the United States include the enforcement of state criminal laws, it would be desirable to amend the phrase "national security or law enforcement interests of the United States" in section 107(a) and

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(c) to read "national security interests of the United States or law enforcement interests of the United States or the States".

With respect to other policy issues raised by the bill, including the burden of proof requirements of section 102(d), and the evidentiary provisions of section 104, the Department would defer to the Department of State.

I would be happy to answer any questions.

Mr. FRANK. Would you agree with the interpretation of your provisions that we got from Mr. Pfund; that is, it would limit original concurrent jurisdiction but it would leave the Federal courts with some role, as Mr. Pfund stated? You have no problem with that?

Mr. MARKMAN. Absolutely. We would certainly see the Supreme Court as having a role.

Mr. FRANK. I was particularly impressed with your argument that domestic relations is an area where we should defer to the States. On a related matter before the Judiciary Committee, not exactly here, but it is important that we get the overall perspective, does that mean the Department now thinks that where we have State court orders for custody of children they ought not be overridden by the Witness Protection Program? As a regular matter, the Witness Protection Program overrides State court decisions regarding child custody. I was impressed by your discussion here. Can I take it that the Department will be working with us to see that the Federal Marshals stop ignoring State court orders?

Mr. MARKMAN. I think you can take it to be the case that we would work very closely with your committee in support of that question.

Mr. FRANK. All right, let's look at it for there is a very glaring inconsistency there. Because in the case of the Witness Protection Program, they don't even take it to Federal court. Your Department just plain flat out ignores child custody orders. And if you have won custody of your child and there are visitation rights to the former spouse, if you happen to marry someone who is sufficiently sleazy to have gone into the Witness Protection Program, you can extinguish, according to Federal practice, the rights of your ex-spouse. I would be a little more impressed if there was a little consistency there.

I assume that also doesn't apply to product liability—this respect for the State courts.

Mr. MARKMAN. Well, Mr. Chairman, as far as the Witness Protection Program, as my colleague indicated, since the President's signing of the executive order in October of last year, we have reviewed a lot of these policies very carefully to see—

Mr. FRANK. I appreciate that. If you would let me know. Let me make a formal request, then. I would hope you would write to me as to what the effect of the President's Federalism order is on the Witness Protection Program. I would ask you to respond in writing.

Mr. MARKMAN. I would be glad to do that.

As far as the product liability issue, that obviously involves a great many other facets of discussion. And when we talk about Federalism, I want to make very clear we are not talking about States' rights. Federalism simply requires that you consider a number of factors and you determine where powers are apportioned between the national government and the State government; and, of course, there are many responsibilities, as you know well, that do belong in the Federal sector.

Mr. FRANK. I understand. The competing claims of children and bottle manufacturers will get dealt with by this subcommittee.

I have no further questions. That would appear to me to be the only really controversial question in the bill and my own view, frankly, is that within this body there will be differences of opinion

but they will not be such that anybody is going to vote against the bill because it gets resolved one way or the other. That is one of the subjects I will highlight and members will participate in.

Some people have raised some concern—let me just ask you this. We haven't had any specific objections, but it is the only other area where it seems to me there is some concern. Over the scope of the override of privacy particularly now, Mr. Markman, it has been suggested to me and I am not expert in it that we are here overriding some State privacy laws. Has the Department done an analysis of that? Is there a problem in that regard? Do we have a sense of what it is we may be doing? That doesn't necessarily bother me, but I would like to know now where we are on that. What does this do to both the Federal and State privacy laws? Are we likely to run into any serious problems there? Are there ways that we might be looking to do some safeguards, some minimum triggering, before that can get done?

Mr. MARKMAN. We haven't done a thorough analysis on that. I think the provisions in this bill are very similar to those that affect the Parental Locator Service. We basically assume that has worked fairly well. There are important privacy interests we are talking about, and we would be glad to take a closer look at that.

Mr. FRANK. All right, that would be good, again, in terms of the Federalism thing. Because we will be able among ourselves to look at the Federal ones and deal with it, but there is apparently an override here of State privacy laws and I would like to know a little bit more about that before we actually put it on paper.

Mr. PFUND?

Mr. PFUND. Mr Chairman, the reason why we have this provision, or certain parts of it, is because, unlike most of the information obtained domestically through the Federal Parent Locator Service to help in interstate child abductions and questions of child support where the information normally stays within the country, under the Convention, of course, information that may be gathered by the Central Authority through the Federal Parent Locator Service or through further efforts to locate the abducting parent or child, is going to end up being sent abroad. It will go either to a Central Authority in a foreign country, and/or the left-behind parent resident in a foreign country and possibly also to the counsel in the United States of that left-behind parent seeking the return of a child. It is essential for the information on the location of the child and/or the abducting parent in this country to be passed on; otherwise, the left-behind parent abroad can't invoke the Convention and seek to bring the action to effect the return of the child. It is because of that foreign element in particular that we need this provision.

Mr. FRANK. I understand that but I want to know a little bit more clearly about what we are doing. For instance, we say here that we would not disclose, the Central Authority can decline to disclose, it is their option, if this would contravene the national security laws or law enforcement interests of the United States.

Well, take the Federalism point. What about law enforcement interests of the States? I would take this to mean we are talking about Federal law enforcement interests. Would you want an ex-



PLICIT reference to the law enforcement interests of the States in here in accord with this?

Mr. MARKMAN. Yes, sir.

Mr. FRANK. I mean, we would still let the Federal Central Authority make the decision, but they would at least be instructed to give consideration to, as I would read this. We would need to add some language.

Mr. MARKMAN. Our complete testimony makes that specific recommendation.

Mr. FRANK. OK. And on confidentiality, you talk about confidentiality of census data so that we don't impugn that. Are there any other privacy concerns that might be there? Well, the complaining parent would not be—he or she, if that individual had a problem they wouldn't go forward with it. So we are then talking about the potential confidentiality of the parent being complained against. I don't know of any problems there but I guess I just would like to raise that.

Mr. MARKMAN. I think we would want to limit the confidential information to those bits of information that help locate the parent.

Mr. FRANK. Right.

Mr. MARKMAN. To the extent that we go beyond the mere location of the parent, I think—

Mr. FRANK. I think that is a reasonable safeguard to write in there. That sounds to me like the kind of thing that we would do. Do you cover that in your testimony?

Mr. MARKMAN. No, sir, I don't.

Mr. FRANK. Well, if not, our staff may be in touch with you about writing some language that would give it that. That confidentiality remains the rule and an exception would be allowed to the extent that it was going to be helpful in locating the child.

Mr. PFUND?

Mr. PFUND. Mr. Chairman, we are perfectly in agreement that the State law enforcement interests be reflected as one of the bases for an exception.

Mr. FRANK. We can write that in.

Mr. PFUND. We also have some suggested language that we could discuss with the staff as to how we might narrow the scope—

Mr. FRANK. That would be very helpful. I don't think anybody objects in principle. And, if you could submit that to us, that would be good.

Mr. PFUND. Thank you.

(The proposed amending language follows:)

State Department-proposed amending language for  
H.R. 2673, Sections 104 and 107(a) and (c), to  
narrow their scope

Hearing February 2, 1971  
in re: for page 107 of transcript

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# 1 SEC 104 ADMISSIBILITY OF DOCUMENTS

- 2 Any application to the United States Central Authority
- 3 or petition to a court submitted in accordance with the terms
- 4 of the Convention, together with <sup>other</sup> documents and any other
- 5 information appended thereto or provided subsequently, shall
- 6 be admissible in court without the need for any legalization
- 7 or authentication + the absence of document shall
- have no effect on the weight to be accorded thereto

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(b) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions and travel costs for the returning child and any accompanying persons, except as provided in subsection (c) or (d).

(c) Subject to subsection (d), legal fees or court costs incurred in connection with proceedings under the Convention or this Act shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.

(d) Any court ordering the return of a child under the Convention shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of return proceedings, and transportation costs related to the return of the child, unless the respondent establishes that such orders would be clearly inappropriate.

#### SEC. 107. COLLECTION, MAINTENANCE AND DISSEMINATION OF INFORMATION

(a) Notwithstanding section 542a of title 5, United States Code and any other provision of law, the United States Central Authority may, under such conditions as it prescribes by regulation, receive from or transmit to any Federal, State, or foreign authority or person information for the purpose of implementing the Convention. No information shall be

disclosed by the United States Central Authority pursuant to this section, however, if such disclosure would contravene the national security or law enforcement interests of the United States or the confidentiality of census data.

(b) Requests for information under this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) Notwithstanding any other provision of law (but subject to subsection (d)), whenever the head of any department, agency, or instrumentality of the United States or of any State, territory, or possession of the United States receives a

request from the United States Central Authority for information, the head of such department, agency, or instrumentality shall, if the information requested is in the possession, custody, or control of such department, agency, or instrumentality, cause a search to be made of the files and records maintained by such

department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the United States Central Authority, except that if any information is obtained the disclosure of which would contravene national security or law enforcement interests of the United States or the confidentiality of census data, such

in the States,

provided these interests or the confidentiality have been brought to the attention of the Central Authority

can or needs to determine the location of a person alleged to have informationally maintained or authorized to be provided to such Central Authority

law enforcement interests of the United States or the confidentiality of census data, such

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Mr. FRANK. I have no further questions. Gentlemen, I appreciate it, and we, as I said, expect to be moving on this one pretty quickly. Thank you.

Mr. PFUND. Thank you.

Mr. MARKMAN. Thank you.

Mr. FRANK. Let me just note as this panel is leaving, Senator Dixon is going to try and get here, and he may not. Senator Dixon has been another very active proponent here. We have had scheduled to testify, but House and Senate schedules aren't always easy to coordinate. We have a statement from Senator Dixon. If he does not arrive to be able to say it in person, and he may be a little late because sometimes House hearings move a little quicker than Senate hearings, and if he is on the Senate clock, he may miss us—if Senator Dixon does not arrive, we will make his testimony a part of the record. But he is entitled to recognition as one of the leaders here.

[The statement of Senator Dixon follows:]

TESTIMONY BY SENATOR ALAN J. DIXON

BEFORE THE

HOUSE SUBCOMMITTEE ON

ADMINISTRATIVE LAW AND

GOVERNMENTAL RELATIONS

ON H.R. 2673

LEGISLATION TO IMPLEMENT THE

HAGUE CONVENTION ON THE CIVIL

ASPECTS OF INTERNATIONAL

PARENTAL CHILD ABDUCTION

FEBRUARY 3, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, THANK YOU FOR HOLDING THIS HEARING TODAY, AND INVITING ME TO TESTIFY ON H.R. 2673, THE IMPLEMENTING LEGISLATION FOR THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION. I AM PLEASED THAT THE SUBCOMMITTEE HAS ACTED SO QUICKLY TO ADDRESS THIS URGENT PROBLEM.

AS YOU KNOW MR. CHAIRMAN, THE VICTIMS OF INTERNATIONAL PARENTAL CHILD ABDUCTION ARE CHILDREN FROM EACH AND EVERY STATE OF THIS COUNTRY, WHO HAVE BEEN ABDUCTED BY ONE OF THEIR PARENTS AND TAKEN ACROSS INTERNATIONAL BORDERS. I FIRST BECAME AWARE OF THE MAGNITUDE OF THIS PROBLEM OVER TWO YEARS AGO. SINCE THEN I HAVE BEEN ACTIVELY INVOLVED IN TRYING TO ASSIST AS MANY PARENTS AS POSSIBLE BRING THEIR CHILDREN HOME TO THE UNITED STATES. I MUST SAY THAT THESE CASES ARE HEART-WRENCHING.

IN ONE CASE THAT HAS RECEIVED MUCH ATTENTION, ONE OF MY CONSTITUENTS, PATRICIA ROUSH, HAD HER TWO DAUGHTERS ABDUCTED BY THEIR FATHER, WHO HAS A LONG CRIMINAL RECORD IN THIS COUNTRY AND A DOCUMENTED HISTORY OF MENTAL ILLNESS AND ALCOHOLISM. IN ANOTHER CASE, A MOTHER WAS TAKEN TO A MOTEL ROOM AND HELD AT KNIFE-POINT WHILE HER CHILDREN WERE ABDUCTED.

HOWEVER, THE PARENTS WHO LOSE THEIR CHILDREN ARE NOT THE ONLY VICTIMS. THE CHILDREN SUFFER AS WELL. CHILD PSYCHOLOGISTS FROM THE ILLINOIS STATE POLICE ASSERT THAT THE TRAUMA ASSOCIATED WITH AN ABDUCTION OF THIS KIND, AND THE SUBSEQUENT DEPRIVATION OF ONE PARENT'S LOVE IS A HORRENDOUS FORM OF CHILD ABUSE. IN ONE CASE, AN ABDUCTED CHILD WAS

OF 1983. IN 1987 ALONE, THERE WAS A 60% INCREASE IN MY HOME STATE OF ILLINOIS.

ONCE THE CHILDREN ARE TAKEN FROM THIS COUNTRY, THEIR RIGHTFUL CUSTODIANS FACE THE NEARLY IMPOSSIBLE TASK OF RECOVERING THEM. CURRENTLY, A PARENT WHOSE CHILD HAS BEEN ABDUCTED TO A FOREIGN COUNTRY IN VIOLATION OF VALID U.S. CUSTODY DECREE, MUST ATTEMPT TO HAVE THAT DECREE RECOGNIZED BY THE FOREIGN COURT. THIS PROCESS IS COSTLY, TIME-CONSUMING AND FREQUENTLY REQUIRES THE RIGHTFUL CUSTODIAN TO BE SUBJECT TO A HEARING BY THE FOREIGN COURT ON THE MERITS OF THE CUSTODY CLAIM. IN VIRTUALLY EVERY CASE, THE COUNTRY TO WHICH THE CHILD IS ILLEGALLY TAKEN, WHETHER ALLY OR ENEMY, REFUSES TO HONOR THE DECISION OF AN AMERICAN COURT, AND RETURN THE CHILD. THE ABDUCTING PARENT IS SIMPLY AWARDED CUSTODY.

THEREFORE, A PERSON WHO LOSES A CUSTODY BATTLE IN THIS COUNTRY HAS AN ENORMOUS INCENTIVE TO ABDUCT THE CHILDREN AND TAKE THEM OUT OF THE U.S. THEN, THE ABDUCTOR CAN BE ALMOST CERTAIN THAT THEY WILL NOT BE FORCED TO RETURN THE CHILDREN TO THE AMERICAN PARENT.

THE HAGUE CONVENTION IS AN IMPORTANT FIRST STEP TO RECTIFY THIS PROBLEM. WHILE IT DOES NOT PROVIDE FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN CUSTODY DECREES, IT SETS UP A SYSTEM OF ADMINISTRATIVE AND LEGAL PROCEDURES DESIGNED TO INSURE THE PROMPT RETURN OF CHILDREN WHO ARE WRONGFULLY REMOVED TO, OR RETAINED IN, A RATIFYING COUNTRY. THE COURTS IN THE COUNTRY TO WHICH THE CHILD HAS BEEN TAKEN ARE UNDER TREATY OBLIGATION TO RETURN THE CHILD TO THE COUNTRY

SPOTTED COVERED WITH FILTH, LIVING IN A DISGUSTING, MUD-FLOOR HOVEL IN MEXICO, BEING RAISED BY HIS FATHER, WHO IS WANTED FOR MURDER IN THIS COUNTRY. HOLLY PLANELL, A WITNESS HERE TODAY, WAS ALLOWED TO VISIT HER ABDUCTED SON, HUEY, IN JORDON. SHE FOUND HUEY'S LIVING CONDITIONS TO BE SUBSTANDARD AND FEARED FOR HIS HEALTH. YET, THE MOST TRAGIC CRUELTY TO BOTH MOTHER AND CHILD IS THAT HOLLY WAS FORCED TO LEAVE JORDAN WITHOUT HUEY, WHILE HE BEGGED HIS MOTHER NOT TO LEAVE HIM. OTHER CHILDREN ARE BRAINWASHED INTO HATING THEIR AMERICAN PARENT. THESE CHILDREN ARE TOLD THAT THE PARENT IN THIS COUNTRY HAS ABANDONED THEM, HATES THEM, NEVER WANTS TO SEE THEM OR SPEAK TO THEM AGAIN. FURTHERMORE, NOT ONLY ARE THESE CHILDREN CONFUSED AND DISORIENTED, LIVING IN A NEW CULTURE AND SPEAKING A DIFFERENT LANGUAGE, BUT THEY ARE TAUGHT TO HATE THEIR NATIVE COUNTRY, THE UNITED STATES.

MR. CHAIRMAN, IN THE LAST TWO YEARS, I HAVE HEARD FROM LITERALLY HUNDREDS OF PARENTS WITH CASES EVERY BIT AS TRAGIC AS THESE. NO ONE KNOWS FOR SURE HOW MANY PARENTS HAVE BEEN VICTIMIZED BY INTERNATIONAL CHILD ABDUCTION. OVER 2,500 CASES HAVE BEEN REPORTED TO THE STATE DEPARTMENT SINCE 1975, BUT MOST EXPERTS BELIEVE THAT THIS NUMBER IS LOW. WE SIMPLY DO NOT KNOW HOW MANY CASES HAVE NOT BEEN REPORTED. SOME PEOPLE BELIEVE THERE MAY HAVE BEEN AS MANY AS 10,000 INTERNATIONALLY ABDUCTED CHILDREN.

EACH YEAR, 300 TO 400 NEW CASES ARE REPORTED, AND THE PROBLEM IS GETTING WORSE. ACCORDING TO STATE DEPARTMENT STATISTICS, THE TOTAL NUMBER OF CASES HAS JUMPED 84% SINCE MAY



FROM WHICH HE OR SHE WAS ABDUCTED. THE FOREIGN COURT MUST COMPLY WITHOUT CONDUCTING ANY PROCEEDINGS ON THE MERITS OF THE UNDERLYING CUSTODY CLAIMS. THUS, IT DENIES THE ABDUCTOR THE LEGAL ADVANTAGE CURRENTLY GAINED THROUGH INTERNATIONAL ABDUCTION.

IN 1980 THE CONVENTION WAS ADOPTED BY UNANIMOUS VOTE OF THE 23 COUNTRIES WHO PARTICIPATED IN THE NEGOTIATION OF THIS AGREEMENT, AND IS CURRENTLY FORMALLY IN FORCE IN 9 OF THESE NATIONS: CANADA, THE UNITED KINGDOM, FRANCE, PORTUGAL, SWITZERLAND, HUNGARY, LUXEMBURG, AUSTRALIA, AND SPAIN. REPORTEDLY, ONCE THE UNITED STATES FORMALLY RATIFIES THE HAGUE CONVENTION, SEVERAL ADDITIONAL COUNTRIES ARE LIKELY TO FOLLOW. ACCORDING TO SECRETARY OF STATE GEORGE SHULTZ, NEARLY HALF OF ALL REPORTED PARENTAL KIDNAPPINGS IN THE LAST SEVERAL YEARS HAVE INVOLVED ABDUCTIONS TO COUNTRIES WHICH PARTICIPATED IN THE PREPARATION AND NEGOTIATION OF THE HAGUE CONVENTION. THEREFORE, IF ALL THE SIGNATORY NATIONS RATIFY THE CONVENTION, THE IMPACT WOULD BE IMPRESSIVE.

FURTHERMORE, BECAUSE THIS PROBLEM AFFECTS NEARLY EVERY NATION IN THE WORLD, I BELIEVE THAT ONCE THE CONVENTION IS WIDELY RATIFIED, ADDITIONAL NATIONS WILL BE ENCOURAGED TO ADOPT IT IN ORDER TO DETER THE ABDUCTION OF THEIR OWN CHILDREN.

ON OCTOBER 9, 1986, THE SENATE CONSENTED TO THE CONVENTION BY A VOTE OF 98-0. HOWEVER, THE UNITED STATES CANNOT FORMALLY DEPOSIT ITS INSTRUMENT OF RATIFICATION UNTIL THIS IMPLEMENTING LEGISLATION IS PASSED. UNTIL THEN, NONE OF

THE PROVISIONS OF THE HAGUE CONVENTION WILL PROTECT THE CHILDREN AND PARENTS OF OUR COUNTRY. FOR THAT REASON, I CANNOT OVER EMPHASIZE HOW IMPORTANT IT IS TO PASS THIS LEGISLATION AS SWIFTLY AS POSSIBLE.

AS YOU KNOW, I AM AN ORIGINAL SPONSOR OF IDENTICAL IMPLEMENTING LEGISLATION IN THE SENATE, INTRODUCED BY MY DISTINGUISHED COLLEAGUE FROM ILLINOIS, SENATOR SIMON. HEARINGS ARE SCHEDULED FOR LATER THIS MONTH. THE SENATE HAS ALREADY PASSED THIS BILL ONCE AS AN AMENDMENT TO LAST YEAR'S FOREIGN RELATIONS AUTHORIZATION ACT. THEREFORE, I EXPECT EXPEDITIOUS ACTION THIS YEAR.

BY WORKING TOGETHER, WE SHOULD BE ABLE TO PROVIDE THIS URGENTLY NEEDED LEGISLATION EARLY IN 1988. AT THE SAME TIME, THE STATE DEPARTMENT MUST CONTINUE TO ENCOURAGE RATIFICATION OF THE CONVENTION BY THE OTHER TWENTY-FIVE COUNTRIES WHICH PARTICIPATED IN THE NEGOTIATION.

WHILE THE HAGUE CONVENTION IS URGENTLY NEEDED, IT IS ONLY A FIRST STEP. IT IS NOT RETROACTIVE. IT WILL NOT HELP THE THOUSANDS PARENTS WHOSE CHILDREN HAVE ALREADY BEEN ABDUCTED. IT IS UNLIKELY IT WILL EVER BE RATIFIED BY EVERY COUNTRY. THE COUNTRIES NOT RATIFYING THE CONVENTION WILL BECOME "SAFE HAVENS" FOR ABDUCTORS.

THEREFORE, WE MUST AGGRESSIVELY WORK TO RECOVER THESE YOUNG U.S. CITIZENS BEING HELD HOSTAGE IN COUNTRIES AROUND THE WORLD. THE STATE DEPARTMENT MUST CONTINUE TO PURSUE EVERY AVENUE AVAILABLE TO ASSIST PARENTS IN RECOVERING THEIR CHILDREN.

IN LIGHT OF THESE OTHER DIFFICULTIES, I HAVE INTRODUCED LEGISLATION IN THE SENATE WHICH MAKES INTERNATIONAL PARENTAL CHILD ABDUCTION A FEDERAL FELONY. THIS WILL PROVIDE A NECESSARY DETERRENT, ALLOW EXTRADITION IN SOME CASES, AND STRENGTHEN THE NEGOTIATING POSITION OF THE STATE DEPARTMENT WHEN PRESSING FOREIGN GOVERNMENTS TO INTERVENE IN THESE CASES. I UNDERSTAND THAT THE HOUSE JUDICIARY SUBCOMMITTEE ON CRIME IS COMMITTED TO HOLDING HEARINGS ON THIS MATTER IN THE NEAR FUTURE.

MR. CHAIRMAN, THE FIRST STEP TO CONTROLLING THESE TRAGIC ABDUCTIONS IS THE HAGUE CONVENTION. I VIGOROUSLY URGE YOU TO SWIFTLY PASS THIS URGENTLY NEEDED IMPLEMENTING LEGISLATION. THE EFFECT OF THE CONVENTION WILL PROVIDE NEW HOPE, EVEN FOR PARENTS WHOSE CHILDREN HAVE ALREADY BEEN ABDUCTED. IN THE CASE OF ALAN HERSHEY, A NEW JERSEY FATHER WHOSE CHILD IS BEING HELD IN CZECHOSLOVAKIA, THE CZECH COURTS HAVE STATED THAT AS SOON AS THE HAGUE IS IMPLEMENTED IN THE UNITED STATES, ALAN HERSHEY'S DAUGHTER WILL BE SENT TO HIM FOR REGULAR VISITATIONS IN THE U.S.

MR. CHAIRMAN, EVERY WEEK EIGHT MORE AMERICAN CHILDREN ARE ABDUCTED. THE HAGUE CONVENTION WILL PROVIDE NEW TOOLS AND NEW HOPE FOR AMERICAN PARENTS TRYING TO BRING THEIR CHILDREN HOME.

Mr. FRANK. Next, we will hear from the American Bar Association, represented by Patricia Hoff, Co-Chairman of the Custody Committee of the Family Law Section. And Ms. Hoff is accompanied by someone whose name you will please give us.

Mr. SCHWARTZ. Philip Schwartz.

Mr. FRANK. Ms. Hoff, are you going to testify?

Ms. HOFF. Yes, I will.

Mr. FRANK. Go ahead.

**TESTIMONY OF PATRICIA M. HOFF, CO CHAIRMAN, CHILD CUSTODY COMMITTEE OF THE FAMILY LAW SECTION, AMERICAN BAR ASSOCIATION; ACCOMPANIED BY PHILIP SCHWARTZ, CHAIRMAN, FEDERAL LEGISLATION AND PROCEDURES COMMITTEE OF THE FAMILY LAW SECTION**

Ms. HOFF. I appreciate the opportunity to appear before you today on behalf of the American Bar Association in strong support of H.R. 2673. Enactment of this bill will enable the United States to bring into force the Hague Convention on the Civil Aspects of International Child Abduction, a treaty expressly intended to safeguard children from the traumatic consequences of international child abduction.

In addition to my ABA activities, I am a legal consultant on issues related exclusively to interstate and international parental kidnapping. Joining me as the other representative of the ABA today is Philip Schwartz. He is an active practitioner—

Mr. FRANK. We will take credentials in the written record.

Ms. HOFF. That is not in written statement. I merely indicate that Philip has practical expertise that you can draw upon in your questions.

Mr. FRANK. I want to take just a minute of your time. In the interest of focusing on the merits, time is the scarcest resource here. That kind of stuff goes in the record and we will take the other stuff orally. Please continue.

Ms. HOFF. The child abduction treaty is designed to bring about the prompt reintegration of a child into its habitual environment following a wrongful removal or retention abroad, as well as to facilitate the exercise of visitation rights across international borders. The Convention's chief objective is expeditiously to restore the factual situation that existed prior to the child's wrongful removal or retention. Once the child has been returned, litigation over substantive child custody can proceed. By promising a swift and almost certain return remedy, the Convention should also have the effect of discouraging abductions in ratifying countries, thereby promoting stability in the child's customary environment, which is so important to healthy child development.

On October 9, 1986, the Senate did give its advice and consent to ratification. However, the State Department, as you know, has postponed depositing the instrument of ratification pending enactment of this legislation. H.R. 2673 and S. 1347, significantly, were developed by the Administration, cleared by OMB and were introduced on behalf of the Administration. Immediate congressional approval is imperative in order for the United States to become

one of the contracting states, thus to allow people in this country and people abroad can invoke the Convention remedies.

The pending legislation essentially explains how the Convention will operate within the context of the U.S. legal system. The legislation translates the provisions of the Convention, which were written generally to accommodate the many different legal systems of the countries that negotiated it, into more specific terms familiar to lawyer judges and government officials in this country. This is going to be a blueprint that, hopefully, will foster the treaty's smooth implementation by averting time and resource-consuming litigation that could otherwise arise over substantive and procedural issues under the treaty.

I am now going to focus in particular on the question of the concurrent jurisdiction provision that is found in the bill. Section 102(a) provides for concurrent original jurisdiction and State and Federal courts to hear return proceedings arising under the Convention and this legislation. It is important to note that there is justification for expressly empowering both Federal and State courts to hear these cases.

First, both State and Federal judges are qualified to hear cases involving child abduction: State judges have expertise in family law, Federal judges have expertise in interpreting and applying treaties.

Second, this is not a departure from current law regarding treaty obligations. 28 U.S.C. 1331 and the U.S. Constitution provide for access to Federal courts with respect to questions arising under treaties.

Third, the United States Supreme Court's decision in *Thompson v. Thompson*, in January of 1988, underscored the need for and the utility in, expressly articulating in Federal legislation that both State and Federal courts have jurisdiction over causes of action arising under the treaty.

The treaty does not require and it does not permit a decision to be made by either State or Federal judges on the merits of the underlying custody dispute. It is very significant because Federal judges typically do not have expertise with in-depth inquiries into the child's best interest. But they will not be thrust into that type of inquiry under this Convention. The Solomon-like decisions that the Supreme Court was concerned about in the *Thompson* case are left to the courts in the countries from which the child was removed typically. The narrowly circumscribed role of the judiciary in Convention cases as found in this bill is not without analogy for the Federal bench. Federal courts in many circuits have now held that the so-called domestic relations exception to diversity jurisdiction does not apply to actions for damages that arise in the context of interstate child custody disputes. Federal judges have successfully adjudicated the tort claims stemming from parental kidnapping without becoming enmeshed in the merits of the underlying custody dispute.

In rejecting the judicially created domestic relations exception to the diversity jurisdiction, the court in the case of *DiRuggiero v. Rodgers*, cited in my statement, found that—and I would like to quote from that opinion—"the spectre of local bias surfaces with unfortunate frequency" in interstate child custody cases. Thus,

"these cases truly represent one of the contemporary essential functions of the diversity grant." The benefit of and the need for Federal court jurisdiction in addition to State court jurisdiction, then, may be even more pronounced in an international abduction case where the party seeking return is truly a foreigner.

In addition, section 102(a) of the bill wisely does not prefer State over Federal court, or vice versa. The choice of court will be at the election of the parent abroad who has been dispossessed of the child's custody unilaterally by the person alleged to have taken the child wrongfully or retained the child wrongfully in this country. It will give that person the opportunity to elect the forum that could most expeditiously hear the claim, and affords to the person abroad as many avenues of redress as are available.

And, finally, with respect to the volume of cases and the impact that might be felt on either the State court bench or the Federal bench or the combination of the two, the State Department speculates, and this is in an informal conversation that I had with them, that probably in the first year or years of the implementation of this treaty maybe 30 to 50 cases might arise where a child in the U.S. is sought to be returned abroad. Now, it is impossible to say at this time where those cases will be brought, but I think it is a fair assumption that they will be brought all over the country, so that the impact on any one court, be it Federal or State, is likely to be minimal.

Moving now into a discussion of the burden of proof as contained in section 102(d), this section, as you know, places a higher burden of proof on the respondent to establish that one of the exceptions to the return obligation applies. The policy underlying this is compatible with the goal of restricting the use of exceptions only to extraordinary cases. It is very important for the United States to become a treaty partner wherein the treaty actually operates to bring about the return of children in appropriate cases. And by shifting the burden to and placing a higher burden on, the respondent who opposes return in proving, making a proof as to those exceptions, we are better ensuring that those exceptions will only operate in extraordinary cases, rather than routinely. And there is, significantly, some precedent for placing this difficult burden on the person opposing return, who, in effect, has brought about a change of custody by taking the child to this country. There are two States by statute and one State by case law in the U.S. which require the plaintiff in an action to modify custody, to establish by clear and convincing evidence that custody should be changed.

Finally, I will turn to Philip to discuss the legalization of documents if that is permissible with you.

Mr. FRANK. No. The understanding was that we would take one witness and we would address questions to both. But we have one witness from an organization that has a prepared statement.

Ms. HOFF. Then we stand ready to answer your questions.

[The statements of Ms. Hoff and Mr. Schwartz follow.]



# AMERICAN BAR ASSOCIATION

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## STATEMENT OF

HARVEY L. GOLDEN, CHAIR  
SECTION OF FAMILY LAW

and

PATRICIA M. HOFF  
CO-CHAIR, CHILD CUSTODY COMMITTEE  
SECTION OF FAMILY LAW

AMERICAN BAR ASSOCIATION

Before the

SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES

In Support of

H.R. 2673  
THE PROPOSED "INTERNATIONAL CHILD PRODUCTION ACT"

February 3, 1988

Chairman Frank, members of the Subcommittee:

My name is Patricia M. Hoff. I appreciate the opportunity to appear before you today on behalf of the President of the American Bar Association, Robert MacCrate, and Harvey Golden, chairman of the Family Law Section, in strong support of H.R. 2673, the "International Child Abduction Act. The ABA applauds this committee for convening this hearing as the first item of business at the start of the session, and pledges the full support of the Association in your efforts to promptly approve this important legislation. Enactment of bill will enable the United States to bring into force the Hague Convention on the Civil Aspects of International Child Abduction, a treaty expressly intended to safeguard children from the traumatic consequences of international child abduction.

I serve currently as co-chair of the Family Law Section's Child Custody Committee, and as a member of that section's ad hoc committee on the ratification and implementation of the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention"). Previously, I participated in the final negotiations on the Hague Convention as congressional advisor to the U.S. delegation, served as a member of the State Department's Study Group on the convention, and drafted a legal analysis of the Hague Convention at the request of the State Department. Joining me as the other representative of the ABA is Philip Schwartz, who currently chairs the Federal Legislation and Procedures Committee of the Family Law Section and the Subcommittee on the International Hague Convention on the Civil Aspects of Child Abduction, Section of International Law and Practice.



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The ABA's support for H.R. 2673 is a direct outgrowth of nearly two decades of deep concern on the part of the Association -- as reflected in various ABA resolutions -- about the harmful effects that parental kidnapping has on children.

In October, 1980, Lawrence Stotter, past chairman of the Family Law Section, represented the ABA as observer on the U.S. delegation at the final negotiations of the Convention. Shortly after the completion of the negotiations leading to the final text of the treaty, the ABA in February 1981 adopted a resolution urging "the appropriate government agencies to approve and ratify the Convention on the Civil Aspects of International Child Abduction as proposed by the Hague Conference on Private International Law."

### Background

The child abduction treaty is designed to secure the prompt return of children who have been wrongfully removed from, or retained outside of, their country of habitual residence, and to facilitate the exercise of visitation rights across international borders. Article 3 of the treaty defines when a removal or retention is wrongful.

Once the Convention comes into force for the United States, new administrative and judicial remedies will be available to secure the return of children who are wrongfully removed from the U.S. to a ratifying country, or wrongfully retained in a ratifying country. These remedies, of course, would also apply in the reverse situation, if a child is removed from a ratifying country and wrongfully taken to, or retained in, the U.S. Each country that ratifies the Convention must establish at least one Central Authority to expeditiously process incoming and outgoing requests for assistance in securing the return of a child or the exercise of visitation rights. The Convention also establishes a judicial remedy in wrongful removal and retention cases which permit an aggrieved parent to seek a court order for the child's prompt return.

The Convention does not depend upon the existence of court orders as a condition to returning children, nor does it seek to settle disputes about legal custody rights. Its chief objective is to restore the factual situation that existed prior to the child's removal or retention. Once the child has been returned, litigation over substantive child custody can proceed. By promising a swift and almost certain return remedy, the Convention should also have the effect of discouraging abductions in ratifying countries, thereby protecting children from emotionally and physically wrenching upheavals.

In June, 1986, in testimony before the Senate Foreign Relations Committee, the ABA urged the Senate to promptly ratify the treaty, and to swiftly enact legislation to ensure its effective implementation. On October 9, 1986, by a vote of 98 to 0, the Senate gave its advice and consent to ratification.

However, as indicated in the Secretary of State's submission of the Convention to the President for transmission to the Senate, the State Department has postponed depositing the instrument of ratification -- and thus postponed bringing the Convention into force in the United States -- until legislation is enacted to facilitate the smooth implementation of the convention throughout this country. H.R. 2673 and S. 1347 were developed for this purpose by the State Department in consultation with the Justice Department, the Department of Health and Human Services, and a Special Study Group comprised of private sector experts on family law. These bills were introduced in Congress in June, 1987 on behalf of the Administration after OMB clearance.

On October 8, 1987, the Senate adopted the text of S. 1347 as an amendment to the State Department authorization bill, H.R. 1777. The ABA expressed its strong support for prompt enactment of this language. Since the provision was not retained in conference we now have this opportunity to assure that this needed implementing legislation is promptly and thoughtfully reviewed and enacted.

Immediate congressional approval of this legislation is imperative to allow the U.S. to join the growing list of countries in which the treaty's remedies are already a reality: Australia, Canada, France, Luxembourg, Portugal, Spain, Switzerland and the United Kingdom. The Convention is also in effect between Hungary and the United Kingdom, and between Luxembourg and France. Additionally, there are indications that Austria, the Federal Republic of Germany, Greece, Italy, the Netherlands and Sweden all plan to become parties to the Convention in the near future.

The pending legislation essentially explains how the Convention will operate within the context of the U.S. legal system. The legislation translates the provisions of the Convention -- which are written in general terms to accommodate the legal systems in the many countries that negotiated it -- into terms and procedures familiar to lawyers, judges and government officials in this country. It is this "blueprint" that hopefully will foster the treaty's smooth and uniform implementation here by averting time-and-resource consuming litigation over substantive and procedural aspects of the treaty. H.R. 2673, inter alia, defines certain terms used in

the Convention; provides that return proceedings may be brought either in state or federal court; authorizes the court to take provisional measures to prevent the child from being further removed or concealed; authorizes the establishment of a Central Authority to obtain information from various federal sources about the location of the child or abductor, and establishes an interagency body to monitor implementation of the Convention. Three of the bill's most discussed provisions -- Sec. 102(a), Sec. 102(d) and Sec. 104 -- are discussed below.

### Court Jurisdiction

Section 102(a) provides for concurrent original jurisdiction in state and federal courts to hear return proceedings arising under the Convention and this legislation. There is ample justification for expressly empowering both state and federal courts to hear such cases.

On the one hand, state courts can bring to bear on return proceedings their experience with interstate and international child custody and parental kidnapping disputes. On the other hand, federal courts have expertise in interpreting and applying treaties that deal with wide-ranging subject matter.

Section 102(a) is consistent with existing law, which provides that

"district courts shall have original jurisdiction of all civil cases arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. 1441.

While 28 U.S.C. 1331 would apply to actions arising under the Hague Convention and the pending legislation, the Supreme Court's decision on January 12, 1988 in Thompson v. Thompson (No. 86-964) underscores the value in expressly providing -- as Sec. 102(a) of H.R. 2673 does -- that a cause of action pursuant to the Convention and this legislation may be brought either in state or federal court. Such language removes any question as to where an action for return can be brought, and spares Congress the need to "revisit the issue" in the future.

To the extent that federal judges may be concerned about hearing cases that nominally sound like traditional child custody matters, it is significant that both the Convention, in Articles 16 and 19, and the legislation, in section 2(8), expressly provide that a decision under the Convention concerning return of a child is not a determination on the merits of the underlying custody dispute. The court hearing a return proceeding would be strictly limited to deciding whether

a child's removal or retention was wrongful within the meaning of the Convention, or whether one of the narrow exceptions to the return obligation as set forth in the Convention would apply. Thus, state and federal judges applying the Convention are insulated from making substantive custody determinations that turn on in-depth inquiries into the child's best interest. The Convention envisions that these Solomon-like decisions will be made once the child is returned, typically in the child's country of habitual residence where relevant evidence would be most readily accessible.

The narrowly circumscribed role of the judiciary in Convention cases as set forth in sec. 102(a) is not without analogy for the federal bench. Federal courts in many circuits have held that the "domestic relations exception" to diversity jurisdiction -- which originated in dicta in Barber v. Barber, 62 U.S. 582 (1858) and In re Burrus, 136 U.S. 586 (1890) -- does not apply to actions for damages stemming from interstate parental kidnapping. Federal judges have successfully adjudicated tort claims without becoming enmeshed in the underlying custody disputes. See, e.g., Kajtazi v. Kajtazi, 488 F. Supp. 15 (E.D.N.Y. 1978); Wasserman v. Wasserman, 671 F.2d 832 (4th Cir. 1982); Fenslage v. Dawkins, 629 F.2d 1107 (5th Cir. 1980). In rejecting the judicially-created domestic relations exceptions to diversity jurisdiction, the court in DiRuggiero v. Rodgers, 743 F.2d 1009, 1019 (3d Cir. 1984), found that "the spectre of local bias surfaces with unfortunate frequency" in interstate child custody cases. Thus, "these cases truly represent one of the contemporary essential functions of the diversity grant." The benefit of, and need for, federal court jurisdiction may be even more pronounced in international child abduction cases arising under the Hague Convention where the out-of-state litigant is truly a foreigner.

Finally, Section 102(a) wisely does not presume to prefer federal over state courts, or vice versa. In providing concurrent original jurisdiction in both state and federal courts, the legislation affords as many avenues of redress as possible for the parent seeking the child's return.

#### Burden of Proof

Section 102(d) places the burden of proving an exception to the return obligation on the person opposing return, who must establish by clear and convincing evidence that one of the exceptions enumerated in the Convention applies. In contrast, the person seeking return of a child must establish by a preponderance of evidence that the child has been wrongfully removed or retained. Placing a higher burden of proof on the respondent is compatible with the goal of restricting the use of exceptions to only extraordinary circumstances.

As a policy matter, the Convention seeks to promote continuity and stability in the child's custodial circumstance. The alleged abductor has disrupted the desired stability, effecting a de facto change of physical custody, which is tantamount to a modification of custody. There is precedent for requiring a parent, in an action to modify custody, to support the request for modification with clear and convincing evidence. See, Ill. Rev. Stat. ch. 40, sec. 610(b); Mich. Comp. Laws Annot., sec. 722.27(c); Bergeron v. Bergeron, 492 So. 2nd 1193, 1200 (La. 1986). Moreover, requiring a higher standard of proof by the respondent serves to diminish any legal advantage that might otherwise accrue as a result of his/her "forum shopping" -- litigation in the country of his/her choice.

#### Legalization of Documents

Section 104 dispenses with the need for authentication or legalization of specified documents submitted pursuant to the Convention. This section directly implements the express requirements of Articles 23 and 30 of the treaty. Similar language is found in all Hague conventions involving transmission of documents among contracting states. Once any such documents are admitted, it is for the trier of fact to determine how much weight they will be accorded, if any, pursuant to the applicable rules of evidence in that jurisdiction.

In conclusion, the ABA respectfully urges this Committee to take favorable action in H.R. 2673 as soon as possible so that the United States may become a full treaty partner under the Hague Convention on the Civil Aspects of International Child Abduction.

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STATEMENT OF  
PHILIP SCHWARTZ

On Behalf Of The  
American Academy of Matrimonial Lawyers  
And  
U.S. Chapter of the International Academy of Matrimonial  
Lawyers

Before The  
Subcommittee on Administrative Law  
And Governmental Relations  
Committee On The Judiciary  
U.S. House of Representatives

In Support Of

H.R. 2673  
The Proposed "International Child Abduction Act"

February 3, 1988

Chairman Frank, Members of the Subcommittee:

As Ms. Hoff stated, my name is Philip Schwartz and I practice law in Virginia and the District of Columbia. My practice emphasizes international family, tax and inheritance law. I am very pleased to appear before you today in support of so important a matter.

I would like to join Ms. Hoff in her praise of this committee's willingness to give priority to the consideration of passage of H.R. 2673, the International Child Abduction Act.

The Act has garnered widespread support amongst the U.S. legal community concerned with child abduction. The governing councils of the ABA's Family Law Section and International Law Section both adopted last August a resolution which I had drafted to urge Congress to expeditiously pass the Act.

In addition, I am pleased to tell that I have come here also on behalf of the two premier organizations of family lawyers in the U.S., both of which wholeheartedly support the bill before you. Both of these organizations are comprised of a select group of certified fellows who specialize in family law. I am speaking of the International Academy of Matrimonial Lawyers, of which I am the President of its U.S. Chapter and of the American Academy of Matrimonial Lawyers, of which I am its liaison to the International Academy.

We believe that the Hague Convention on the Civil Aspects of International Child Abduction, which cannot go

into force in the U.S. unless the bill before you is enacted, is a critical and indispensable advance in the worldwide effort to reduce the incidence of international child snatching. The tragic effect on abducted children and the left-behind parent is well documented and requires no further comment from me. Putting the Convention into force in the U.S. will begin the process of discouraging international forum-shopping with the child as the defenseless pawn in the ongoing contest between its parents.

I am pleased to report to you that I have obtained approval from the ABA's Family Law Section to conduct a program on the Convention and the implementing Act at the ABA's annual meeting in Toronto in August of this year. Not to be outdone, I have planned a program on this subject for the annual meeting of the U.S. Chapter of the International Academy of Matrimonial Lawyers here in Washington this April.

Furthermore, I am seeking approval from all the organizations that I am here representing to conduct seminars nationwide to educate family lawyers and the general public on what the Convention can do and how to proceed under it. This effort is born of the realization that the Convention's success in this country will largely depend on the family law bar becoming acutely aware of the Convention's procedures.

Ms. Hoff's expertise on the Convention has no peer, as evidenced by the erudite analysis she prepared for the State Department and by her presentation today. I would not deign



to comment beyond what she has already set forth.

From a practicing lawyer's vantage point, however, I would like to say a few words on two provisions in the Act about which some questions have been raised.

Section 102(a) of the Act provides for concurrent original jurisdiction in state and federal courts in the U.S. under the Convention. Such concurrent jurisdiction is not an anomaly. Where Congress has concluded there is a justifiable need for it, Congress has included concurrent jurisdiction in legislation.

The fear of federal judges that they may become embroiled in full-blown contested custody cases is misplaced. The Convention and the Act are explicit to the contrary. Ms. Hoff has detailed analogous cases in family law in which the federal court has found it has jurisdiction. Perhaps the overriding reason for the grant of federal jurisdiction is one of achieving fairness. It would enhance acceptance and compliance by a citizen of another country who likely will perceive the federal court as a neutral forum not prejudiced by parochial ties. If I may be permitted to draw a football analogy in the city of the Superbowl champions, the availability of federal jurisdiction under the Convention would provide a level playing field alternative to the home field advantage. In fact, my personal preference is that only the federal courts should have jurisdiction, but I do not want to muddy up the case for passage of the enabling Act at this

junction.

Some concern has been raised over Section 102(d), which imposes a higher burden of proof on the person opposing the return of the child to his home country, viz., "clear and convincing evidence", as against the burden on the person seeking return of the child, viz., "preponderance of the evidence". This is not an unusual approach in family law.

In addition to the situation Ms. Hoff alluded to, there are others which are tantamount to placing a higher burden of proof on one party. An example would be the requirement that the moving party seeking a change of custody must prove that there has been a substantial change of circumstances. Although this is more accurately a question of a higher quantum of proof, nonetheless, it is closely analogous to a higher burden of proof.

I am pleased to have had this opportunity to speak before you and would be glad to answer any questions you might have of me. I would appreciate the Chairman allowing me to place my written statement in the record of these hearings.

Thank you, Chairman Frank and your colleagues on the Subcommittee.

Mr. FRANK. I want to thank you. Your testimony, particularly with reference to the Federal-State issue, was very helpful. I must say it reflects generally what I think. I agree that the bias question is a fortiori where we are talking about a foreign national. And I think we are talking in some cases about comity here. It is essential, since we are not going to be able to send the Army in to get kids where they are being held in a foreign situation, that there be respect for international comity, and I think that differentiates this from the purely domestic kidnapping situation and in my judgment is a good argument for retaining some of the concurrent jurisdiction.

I have no further questions with regard to the testimony. I agree with you that the burden-of-proof question is a relevant one and I appreciate what you had to say about that. I would assume also with regard to the Federal court that if it became a case where one of the exceptions was raised, and that would be the exceptional case where the Federal court would have to get into what are normally family law questions, that there are techniques, appointment of a master and other ways in that exceptional case that could be used. So I am inclined to favor that.

Mr. Shaw?

Mr. SHAW. Mr. Chairman, to continue that, with regard to the concurrent jurisdiction, can you see a way which a case might be removed from State court to Federal court to answer a Federal question and then go back to the State court?

Mr. SCHWARTZ. That is a conceivable approach. Frankly, my opinion, which is not the same as the ABA's, is that the jurisdiction ought to be solely Federal rather than concerned with the State.

Mr. SHAW. Well, I can tell you right now, if it is solely Federal, in my jurisdiction the youngster that we are trying to retrieve will be on Social Security by the time the order is entered.

Mr. SCHWARTZ. In this area the Federal courts are a lot swifter than the State courts.

Mr. SHAW. Well, that is the problem. And you can speak to this area, but I can speak to the Southern District of Florida and we are absolutely overwhelmed. And whether these cases would get any priority jurisdiction is really a question, but to put more exclusive jurisdiction into the Federal courts in South Florida would be a terrible mistake. And that is a problem in different areas around the country.

Ms. HOFF. Regarding the situation that you describe, counsel representing the party abroad would assess the volume and the caseload in the respective State and Federal courts in the jurisdiction where the child is found, and then, based upon how quickly a hearing could be had and a decision rendered, would opt for the State court in the case you describe, or in another jurisdiction, where the Federal docket is small—

Mr. SHAW. Well, that is the person who is filing the case, he would have an ability to go in and choose which court system he would want.

Ms. HOFF. Under the legislation as presently drafted, yes. And if a case were filed in a State court and an issue regarding a Federal question, interpretation of the treaty came up, believe under ex-

isting rules, and perhaps Philip can correct me if I am mistaken, the case could be removed to the Federal court.

Mr. SHAW. And then the case go back to the State court?

Ms. HOFF. I do not believe so.

Mr. SHAW. Is that procedure available?

Mr. SCHWARTZ. I believe so. The other side of the coin is that it would be anomalous to impose exclusive jurisdiction on the State courts to interpret a treaty. I think that at best it ought to be a concurrent, but, in my opinion, it would be better if it was exclusively Federal.

Mr. SHAW. Thank you, Mr. Chairman.

Mr. FRANK. Thank you. I was going to say that will be one of the issues that we will continue to deal with.

I thank you both for being available to us, and we appreciate it.

Ms. HOFF. You are welcome.

Mr. FRANK. Finally, we have a panel of people who represent those who have been working on behalf of the children and who are representative of the anguish and concern that families themselves have, and we appreciate their coming forward. Holly Planells is President of American Children Held Hostage, and David Lloyd is the General Counsel for the National Center for Missing and Exploited Children.

Would you please come forward? Mr. Lloyd, we will begin with you.

**TESTIMONY OF HOLLY PLANELLS, PRESIDENT, AMERICAN CHILDREN HELD HOSTAGE; AND DAVID W. LLOYD, GENERAL COUNSEL, NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN**

Mr. LLOYD. Good morning, Mr. Chairman. I will attempt to comply with your instructions earlier and proceed directly to respond to the questions that you have raised.

Mr. FRANK. Thank you.

Mr. LLOYD. The National Center for Missing and Exploited Children believes that the granting of concurrent original jurisdiction to courts of the States, the District of Columbia, the territories and possessions of the United States, and the United States District Courts, in section 102(a) is the correct approach. We already have a situation where State courts could modify foreign decrees under Article 23 of the Uniform Child Custody Jurisdiction Act. Unfortunately, we have had a lack of uniformity in application of that, and it is our belief that if the Congress restricts jurisdiction of these cases to State courts there is a grave danger that the procedures of the Convention will not be uniformly applied, and that would be no better than where we are with the UCCJA.

There is nothing, obviously, to prevent Congress from granting concurrent jurisdiction under Article III, section 2, of the Constitution for cases that would arise under the International Child Abduction Act, and concurrent jurisdiction is not without precedent. The Center does not believe that the Act imposes responsibilities upon the Federal courts beyond their traditional lack of expertise in domestic relations matters, in part, because the exceptions to return of the child under the Convention are so limited. The grant

of concurrent jurisdiction is within the spirit of the Convention's efforts to resolve the problem of international child abduction and to deter future abductions.

The Center does not believe that the Federal courts will be swamped with vast numbers of new cases. The Center's experience is that there are only a handful of these cases each year that arise, probably in the range of 30 to 50 cases per year. The Center believes that because the International Child Abduction Act makes it clear that remedies under the Convention are in addition to other legal remedies there would be litigants who would choose to litigate their case under Article 23 of the UCCJA, based on a desire to actually modify the foreign court order or to have it enforced directly, as well as those who would be choosing the State court based on the caseload of the particular Federal court.

Turning to the burden of proof issue, the Center believes that the provisions of section 102(d) that shift the burden of proof to the respondent opposing return and raise that burden of proof to one of clear and convincing evidence are not altogether unprecedented. It is obviously analogous to affirmative defenses and to the operation of presumption, both of which are already covered in the Federal Rules of Civil Procedure and Federal Rules of Evidence and the many States which have enacted similar provisions to the Federal rules.

The Supreme Court, itself, has recognized that shifting the burden of proof is not novel, and in my written testimony I summarize the statement from the Supreme Court in the case of *Keyes v. School District No. 1 of Denver, Colorado*. As the purposes of the Convention and the findings of Congress regarding the Act make clear, the allocation of the burden of proof should rightfully be greater on the party that is opposing return.

The Center believes that the intent of Articles 2, 11 and 13 of the Convention and paragraphs 4 and 5 of the congressional findings for the International Child Abduction Act would best be effected by shifting the burden of proof in the sense of shifting the burden of persuasion, as specified in 102(d). But should the subcommittee feel that the raising of the burden of proof to the respondent as well as shifting the burden of proof is unsatisfactory, the Center believes that the purposes could also be effected by merely shifting the burden of proof and maintaining the standard as a burden of proof by a preponderance of the evidence on the respondent opposing return.

The Center believes that section 104 in the International Child Abduction Act with respect to the admissibility of foreign documents does not radically change existing procedures in either Federal or State courts. Since the Convention itself provides that a party in applying for the assistance of a Central Authority may also supply an authenticated copy of any relevant decision, other agreement, certificate or affidavit from the Central Authority or other competent authority in the other nation that would concern the relevant law, and since the judicial authorities may take judicial notice of the relevant law, it would seem that in the interest of judicial economy alone the court would have authority to order that the copy would be properly authenticated.

In addition, the United States has been bound by the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents since 1981, which operates very similar to Article 8 of the Convention, and it should be very clear that neither the Convention nor this Act would prohibit the respondent opposing return from challenging the authenticity at any later point in proceedings. Therefore, we believe that section 104 is correctly written.

Finally, the Center believes that Article 107(a) of the Act appropriately seeks to implement the obligation of the Central Authority to discover the whereabouts of the child by having access to records that would be otherwise confidential under the Privacy Act. The Center believes that, based on our experience with domestic parental kidnapping, to apply the unusual notice requirement to the Privacy Act to the parent who is hiding the whereabouts of the child would simply lead to the disappearance of that parent and child into another jurisdiction within the United States or, perhaps, to another country.

We do believe that section 107(a) is alright in that, first, the Central Authority here can prescribe regulations to govern the way it would obtain information; and, secondly, the requirement of section 107(d) that it use the Federal Parent Locator Service before seeking to otherwise override private laws would provide adequate safeguards for the protection of the individual's privacy. I might point out that to date the Department of Health and Human Services has not enacted regulations to implement the use of the Federal Parent Locator Service with respect to cases brought under the Parental Kidnapping Prevention Act. However, we are aware that they have had numerous very productive conversations with the Department of State with respect to the provision that is in this Act, and we feel very confident that HHS would enact regulations in conjunction with the Department of State that would safeguard the Privacy Act.

The National Center believes that implementation of the Convention by passage of this Act is vital to the effort to protect children throughout the world from this potentially tragic outcome. Because, whether they are citizens or foreign nationals wrongfully brought to and retained here or whether they are American citizens wrongfully taken to and retained in another nation, they are all our children.

Thank you.

Mr. FRANK. Thank you for being very much to the point.

[The statement of Mr. Lloyd follows:]

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SUMMARY OF THE TESTIMONY OF  
David W. Lloyd, General Counsel  
National Center for Missing and Exploited Children  
on the  
INTERNATIONAL CHILD ABDUCTION ACT, H.R. 2673

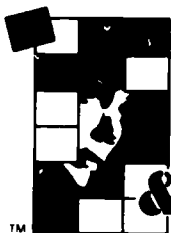
The National Center for Missing and Exploited Children believes that the International Child Abduction Act, H.R. 2673, will appropriately implement the Hague Convention on the Civil Aspects of International Child Abduction without the need for amendment.

In particular, the National Center believes that the grant of concurrent jurisdiction in Section 102(a) to federal and state courts to cases arising under the Act is necessary in order to fully implement the Convention. Since Article 23 of the Uniform Child Custody Jurisdiction Act has proved ineffective in providing for enforcement of the custody orders of foreign courts, and since there is a need for uniformity in interpretation of the Convention, federal court jurisdiction is imperative. The limited nature of the proceedings under the Convention should not embroil the federal courts in complex domestic relations issues.

The Center believes that Section 102(d), the provision shifting and raising the standard of proof to the respondent opposing return, is appropriate to effect the purposes of the Convention, since such proceedings do not serve as final custody decrees. Alternatively, the Center suggests shifting the burden of proof without raising the standard of proof.

The Center believes that Section 104, the provision eliminating the necessity for legalization of foreign documents to establish their admissibility in proceedings under the Convention, is appropriate, since it is similar to existing rules of procedure, evidence, and an existing Hague Convention, and since the parties may always challenge the accuracy of the documents.

Finally, the Center believes that Section 107 provides sufficient safeguards in balancing the Central Authority's need for access to information to achieve the goals of the Convention while respecting the privacy rights of individuals.



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STATEMENT OF

David W. Lloyd, General Counsel

for the

NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN  
Ellis E. Meredith, President

before the

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES

on

H.R. 2673  
THE INTERNATIONAL CHILD ABDUCTION ACT

February 3, 1988



Mr. Chairman, the National Center for Missing and Exploited Children appreciates the opportunity to discuss with the Subcommittee on Administrative Law and Governmental Relations the enactment of the International Child Abduction Act, H.R. 2673.

The National Center for Missing and Exploited Children was established in April of 1984 to initiate programs to protect children, provide assistance to those seeking to locate and reunite missing children with their families, and provide assistance to those combating the incidence of sexual exploitation of children. The Administrator of the Office of Juvenile Justice and Delinquency Prevention, pursuant to section 404(b) of the Missing Children's Assistance Act, has entered into a cooperative agreement with us to provide a national toll-free telephone hotline to which people can report the location of missing children and request information as to how reunification can be effected, and to provide a national resource center and clearinghouse to provide technical assistance to local and state governments, law enforcement agencies, public and private nonprofit agencies, and individuals with respect to missing and sexually exploited children.

In the course of providing this assistance, the Center has received several hundred calls and letters from missing children's organizations, police officers, attorneys, and parents requesting assistance in recovering children who have been victims of international parental kidnapping. In the last three months alone, the Center was asked for assistance in fifteen cases, including those affecting constituents of Congressman Berman and Congressman Shaw. The vast majority of international parental kidnapping cases known to the Center involve children taken from the United States by a parent who retains citizenship in another nation, but we have also received requests for assistance from foreign nationals whose child has been kidnapped by the other parent and brought and retained in the United States, in such states as Massachusetts, California, and Florida. Some of these cases request assistance in trying to locate the child within the United States, while others involve questions as to whether a state court will enforce return of the child pursuant to the order of a court in the other nation.

The Center is deeply appreciative of the assistance provided by the Office of Citizen Consular Affairs to those attempting to return internationally abducted children. We believe that the International Child Abduction Act can be of great benefit in encouraging other nations to ratify and accede to the Hague Convention on the Civil Aspects of International Child Abduction. We have also been told foreign governments will be more willing to order the return of U.S. children under the principle of comity, even if those nations do not themselves sign the Convention, if the United States begins implementation of the Convention.

We understand that the Subcommittee has some concerns with respect to particular provisions of the legislation, and I would like to address these.

## CONCURRENT ORIGINAL JURISDICTION

First, the Center believes that the granting of concurrent original jurisdiction to the courts of the states, the District of Columbia, the territories and possessions of the United States, and the United States district courts in Section 102(a) is the correct approach.

State courts already have jurisdiction to enforce foreign custody and visitation orders under Article 23 of the Uniform Child Custody Jurisdiction Act (UCCJA). While Article 23 gives authority to enforce the order of a foreign court relating to child custody and right of access, it requires the state court to inquire into the procedural rules of the foreign court to ascertain whether notice and an opportunity to be heard were provided since they are prerequisites to enforcement. Moreover, the UCCJA would allow the state court to modify the foreign order if jurisdictional prerequisites were met, instead of merely ordering the child's return for litigation in the nation of the child's habitual residence. Most troublesome of all, Arizona and Oregon made Article 23 discretionary in their enactment of the UCCJA while Missouri, New Mexico, Ohio and South Dakota have omitted this provision entirely from their enactments of the UCCJA. Thus, some foreign litigants may not have a remedy under the UCCJA. This is the mess that has led to the ratification of the Convention by the Senate.

If Congress restricts jurisdiction of cases arising under the Convention to state courts, there is a grave danger that the procedures of the Convention will not be uniformly applied. This is no better than relying on the UCCJA.

Article III, Section 2 of the Constitution makes it clear that federal judicial power extends to cases arising under federal law and treaties. Federal court jurisdiction might extend to cases brought under the Act as cases presenting federal questions (23 U.S. Code Sec. 1331(a)). While it is true that "rarely is the relationship between a private claim and a general treaty sufficiently direct so that it may be said to 'arise under' the treaty," Dreyfus v. Von Finck, 534 F.2d 24 (2d Cir. 1976, citing 13 Wright, Miller & Cooper, Federal Practice and Procedure Sec. 3563 at 424 (1975)), the Convention clearly confers a right upon a private claimant to seek redress in the courts of the United States with the assistance of the federal government's Central Authority.

The Center does not believe that a case brought under the Act would have jurisdiction under the Alien Tort Claim Act (28 U.S. Code Sec. 1350) (although at least one case, Abdul-Rahman Omar Adra v. Clift, 195 F.Supp. 857 [D. Md. 1961] holds to the contrary).

If neither of these two statutes is deemed to confer existing jurisdiction for federal courts for cases arising under the Act, there is nothing to prohibit Congress from granting concurrent jurisdiction under Article III, Section 2, for cases arising under the Act without requiring a jurisdictional amount.

Moreover, concurrent jurisdiction is not without precedent. The Federal Employers' Liability Act (45 U.S. Code Sec. 56) specifically grants jurisdiction to both state courts and the courts of the United States, and federal court jurisdiction arising under federal statutes is concurrent with state court jurisdiction unless the federal jurisdiction is expressly restricted.

Since neither the Convention nor the Act empowers a court to determine the merits of the underlying custody order or claim, but merely to order or deny a petition for return of the child, and since the grounds for denial of the the petition are so limited, the Center does not believe that the Act imposes responsibilities upon the federal courts beyond their traditional lack of expertise in domestic relations matters.

In addition, since the Act is in the nature of a procedural remedy to restore the parties to the status quo, the grant of concurrent jurisdiction is within the spirit of the Convention's efforts to resolve the problem of international abduction and deter future abductions.

As to concerns about the practical impact of granting federal court jurisdiction over cases arising under the Convention, the Center does not believe that the federal courts will be swamped with vast numbers of new cases, as had been expressed when the issue of granting federal court jurisdiction over domestic child custody cases was being discussed during the passage of the Parental Kidnapping Prevention Act. Article 29 of the Convention and Section 102(f) of the Act make it abundantly clear that the remedies under the Convention are in addition to other legal remedies. As was noted in the "Legal Analysis of the Hague Convention on the Civil Aspects of International Child Abduction" published in the Federal Register (Vol. 51., No. 58, p. 10503) on March 26, 1986, in some cases a foreign national might choose to litigate the issue of having a child returned to his/her country from the U.S. by invoking Article 23 of the Uniform Child Custody Jurisdiction Act in the appropriate state court rather than in relying on return under the Convention.

#### BURDEN OF PROOF

Second, the provisions of Section 102(d) that shift the burden of proof to the respondent opposing return, and raise that burden of proof to one of clear and convincing evidence are not altogether unprecedented. This provision is analogous to an affirmative defense, or to the operation of a presumption that shifts the burden of production of evidence to the opposing party. There is ample precedent for such a shifting of the burden of production of evidence under the rules of both federal and state civil procedure and evidence; Rule 8(c) of the Federal Rules of Civil Procedure lists a number of common affirmative defenses and Rule 301 of the Federal Rules of Evidence describes the operation of presumptions in shifting the burden of production of evidence. The Supreme Court has recognized that shifting the burden of proof is neither new nor

novel; in Keyes v. School District No. 1, Denver, Colo., 413 U.S. 189, at 209 (1973), the Court stated

There are no hard-and-fast standards governing the allocation of the burden of proof in every situation. The issue, rather "is merely a question of policy and fairness based on experience in the different situations."

(Citing 9 J. Wigmore Evidence Sec. 2486 at 275 (3d ed. 1940)). As the purposes of the Convention and the Findings of Congress regarding the Act make clear, the allocation of the burden of proof should rightfully be greater on the party opposing return.

Although Rule 301 does not permit the shifting of the burden of proof in the sense of persuasion, it is important to note that in enacting Rule 301, Congress specifically retained the right to provide for alternative operation of presumptions in specified civil actions and proceedings. Thus, Congress can clearly authorize the shifting of the burden of persuasion to the respondent who claims that one of the Exceptions set forth in the Convention applies. The Center believes that the intent of Articles 2, 11, and 13 of the Convention, and paragraphs (4) and (5) of the Congressional findings in Section 2 of the Act would best be effected by shifting the burden of proof in the sense of persuasion as specified in Section 102(d).

Nor is the raising of the burden of proof altogether unique. For example, in petitions brought in a juvenile court alleging that a child is neglected by reason of abandonment, the government must generally prove the petition by a preponderance of the evidence; if the government elects to terminate parental rights in the same proceeding, it must prove its motion by clear and convincing evidence.

The Act is unique, however, in its combination of shifting and raising the burden of proof. Such a step is in keeping with the intent of Articles 2, 11, and 13 of the Convention, and with paragraphs (4) and (5) of the Congressional findings in Section 2 of the Act. Should the Subcommittee believe that this raising of the burden of proof is unsatisfactory, the Center believes that the purposes of the Act can be effected by merely substituting the phrase "a preponderance of the" for the phrase "clear and convincing," thus merely shifting the burden of production and persuasion to the respondent.

If the Subcommittee is concerned that Congress lacks power to enact this subsection to regulate the procedure of state courts hearing petitions for return under the Convention, it may choose to grant jurisdiction under Section 102(a) solely to the federal courts and enact this subsection only for federal courts.

#### ADMISSIBILITY OF DOCUMENTS

Section 104 merely restates Article 30 of the Convention. The Center believes that Section 104 does not radically change existing

procedures in federal and state courts.

Under Article 8 of the Convention, a person applying for the assistance of a Central Authority may also supply an authenticated copy of any relevant decision or agreement or a certificate or affidavit from a Central Authority or other competent authority concerning the relevant law; under Articles 14 and 15 the authorities may take judicial notice of relevant law and may request the applicant to obtain a determination from the authorities in the nation of habitual residence that the removal or retention of the child was wrongful within the meaning of the Convention. It thus appears likely that the court would be presented with appropriate documents.

Article 8 appears to be similar to Rule 44(d)(2) of the Federal Rules of Civil Procedure and Rule 902(3) of the Federal Rules of Evidence. In addition, the United States has been bound by the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents since 1981, which is also similar to the operation of Article 8 of the Convention.

Neither of the two Conventions nor the Act prohibits the respondent from challenging the accuracy of the documents once they are admitted into evidence. Therefore, the Center believes that Section 104 is correctly written.

#### CENTRAL AUTHORITY ACCESS TO PRIVACY ACT INFORMATION

Article 7 of the Convention requires the Central Authority to take "all appropriate measures" to discover the whereabouts of a child sought under the convention. Section 107(a) of the Act appropriately seeks to implement that obligation by granting the Central Authority information as to the whereabouts of the child through access to records otherwise confidential under the Privacy Act.

The Privacy Act itself contains a number of significant exceptions. The Center believes that the right of the Central Authority to obtain information relevant to the purposes of the Convention is similar to the seventh exception to the conditions of disclosure of information safeguarded by the Privacy Act:

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(5 U.S. Code Sec. 552a.)

The Center further believes, based on our experience with domestic parental kidnapping, that to apply the notice requirements of the Privacy Act to the individual whose records are disclosed will

simply lead to the disappearance of that individual, and thus defeat the purposes of the Convention.

Finally, the Center believes that the provision of Section 107(a) that the Central Authority prescribe regulations for the receipt and transmission of information, and the requirement of Section 107(d) that it use the Federal Parent Locator Service to obtain such information in preference to using subsection (c) of Section 107, contain adequate safeguards for protection of individuals' privacy. Frankly, the Center does not anticipate that there will be many individuals whose records, to the extent that they are maintained at all by a federal agency, cannot be found through the Federal Parent Locator Service.

#### CONCLUSION

The National Center for Missing and Exploited Children is grateful for this opportunity to address these issues and would be happy to provide whatever further assistance it can to the Subcommittee in its deliberations on the International Child Abduction Act. We know that children who have been parentally abducted bear hidden emotional scars that may never heal. The National Center believes that implementation of the Convention by passage of the International Child Abduction Act is vital to the effort to protect children throughout the world from this potentially tragic outcome. Whether they are children of foreign nationals wrongfully brought to and retained in the United States, or children of U.S. citizens wrongfully taken to and retained in another nation, they are our children.

Mr. FRANK. Ms. Planells?

Mr. PLANELLS. I would just like to take a second to thank you. And I also wanted to acknowledge a father who is also going through the same hell as myself, Dr. Simon Cunningham, who has two sons in Spain. He has submitted testimony.

Mr. FRANK. Let me say, we appreciate particularly your being here. It is not easy to share personal unhappiness, and your willingness to do so in the interest of a lot of other people so that they won't have to go through it is something that we particularly appreciate. Thank you.

Mr. PLANELLS. Absolutely.

Two days ago marked the 18-month anniversary of the abduction of my son Huey, who was taken to Amman, Jordan, by my ex-husband, Bassam Yousef Aqqad, age 26. Bassam is a Jordanian national who was born in Nablus in 1967 but whose family fled to Jordan after the Six Day War with Israel. The kidnapping was in direct violation of an American court order that granted me sole custody of my then 2-½-year-old son and forbade his removal from the United States. Bassam had to have permission from the Knox County Chancellery court in Knoxville, Tennessee, before he could remove the child. We lived in Knoxville together until June of 1984 when I filed for divorce. My ex-husband is wanted for kidnapping of a minor child, and my son remains in Jordan to this day.

Bassam and I married on December 23, 1982, at my parent's home in Brentwood, New York. We met while attending school at the University of Tennessee in Knoxville. I was studying journalism and he was working on his bachelor's degree in business administration. It was not a "green card" marriage because Bassam chose not to become a U.S. citizen. If he wanted an American residency permit, his sister, a naturalized American citizen, would have gladly sponsored him.

Over the next few months, I saw some frightening changes in my husband's behavior. He insisted I no longer wear revealing clothes such as bathing suits and shorts. I wasn't allowed to associate with my male friends at college or speak about Jesus Christ as my Lord and Savior. Then I realized I was pregnant.

Bassam told me I had to have the baby in Jordan or he would divorce me. Needless to say, I wanted my first child to be born in the United States where we lived, not the Hashemite Kingdom of Jordan. I was overcome with grief because I feared being left alone to care for my child by myself and I did not want this marriage to fail. So, out of fear and the fact that I was awfully sick during the pregnancy, I agreed to have my son in Jordan. We flew to Amman in June 1983. I spent four months there living with his family. He decided to go to America in September 1983 to claim a scholarship and continue his education, leaving me to have my first child in a foreign country without my husband. I was terrified beyond words.

Despite these obstacles, I gathered up my strength and said my prayers more than ever. On October 5, 1983, Huey, or Yousef, as his Arab family calls him, came into this world weighing 6 pounds, 6 ounces. Thank God, it was a normal delivery and I prepared myself and my new son for the trip back home to America.

I spent my 21st birthday sitting in the American Embassy in Amman waiting to report Huey's birth. I wanted him to have

American citizenship even though his father would not allow me to have the baby where I wanted. At first, I thought my having Huey in Jordan would seriously jeopardize any plans of bringing him home—that is, after the abduction—but over the last 1-½ years I realize, through talking with other parents, where the child was born has nothing to do with how the U.S. Government will act to insure their return. Most of the abducted children in my organization were born right here in the United States of America and they still remain abroad.

Huey and I left Jordan on November 2, 1983. Two days later, the British Embassy up the street from where my ex-husband's family lives was the target of a terrorist attack.

Several weeks later, on American soil, I came down with both types of hepatitis. I spent Thanksgiving recovering from the potentially dangerous liver disease, which my doctors told me I had contracted from an unsterilized needle in the Jordanian hospital. Over the next six months, Bassam and I fought bitterly. He resented my culture and religion, and I resented him for abandoning me in Jordan. He started to restrict my every move. He even forbid me to see my best friend from college, a Jewish woman.

During this time his brother lived with us as well as two other Palestinians who could not afford their own place. I could not take this oppressive environment another minute. This was no way to raise a baby. So, on June 4, 1984, I marched myself and the baby to a lawyer's office to file for divorce. I moved out that day never to return.

Our divorce was finalized on April 5, 1985. Bassam had contested the divorce and wanted custody. Unfortunately, the judge I had did not like the fact that I had taken my son to New York where my parents live so they could take care of him while I finished my last year of school. Bassam was not ordered to pay any kind of temporary support for me and he only paid \$100 a month in child support. Bassam was never denied access to his son. My parents said he could fly up and see Huey whenever he wanted. Bassam certainly had the money since he is the son of a self-made millionaire, but Bassam never saw his son for about eight months.

The judge threatened to take my custody away if I did not bring my son back to Tennessee for reasonable visitations. So, my ailing grandmother offered to take care of Huey, a typical toddler, during the week and I would take care of my son on the weekends.

During the trial I told the judge that Bassam had threatened to kidnap Huey to Jordan and I wanted Bassam to surrender both Huey's American and Jordanian passports as well as post a substantial bond. I also wanted only supervised visitation. The judge agreed to the bond, but I found out the day after the kidnapping that my attorney never followed through with the court order and the bond was never posted. As far as supervised visitation, the judge permitted such an arrangement for the first few months to see how trustworthy Bassam was during that time. Of course, he didn't try anything.

Eventually, I finished my journalism degree and got a job with United Press International in Atlanta, Georgia, in August 1985. Getting this position meant leaving the State and amending the visitation order so Bassam could see his child fairly regularly. He



also moved, but to Nashville, in order to finish his degree. He would not come to Atlanta and I would not travel to Nashville, so we agreed to meet in Knoxville where we both had family, and we met for at least one weekend a month. At this time, the judge had ordered unsupervised visitation against my protest.

This arrangement worked out well for about a year, although every time I dropped off my son for a visit, I prayed to God that he would be there the next day. On August 1, 1986, I left Huey with his dad with every intention of picking him up the following afternoon. But when I arrived at my ex-sister-in-law's home in Knoxville, I was greeted by crying children who told me that Huey and Bassam never came home that night. I called Bassam's family in Amman and Bassam and Huey were there. My worst nightmare was now reality.

I immediately called the State Department and an envoy from the American Embassy in Amman went to confirm Huey's "welfare and whereabouts." Then they sent me a list of Jordanians to fight for Huey's custody in a Muslim Shariah court, which has never given custody of what it considers a Muslim child to an American mother—American Christian mother who resides outside of Jordan.

Through my job, Senator Albert Gore became interested in my case. He immediately contacted the Jordanian Embassy in Washington, and over the next two months letters dashed back and forth from the United States and Jordan. I met with the Jordanian Ambassador to the U.S., Mohamed Kamal, and we flew to Jordan in November 1986 along with my mother. We showed up announced at my ex-husband's home. We were invited in and I saw my troubled son for the first time in two months. He was dressed in rags and staring at me like he knew who I was but was not quite sure. He was traumatized beyond belief. It was as if he had been hit in the head with a baseball bat, and he had regressed emotionally. My mom and I spent about 10 days in Amman. The Ambassador promised all kinds of things, but delivered nothing. So, my mom and I visited with my son behind locked doors and guarded by several family members. I tried to bargain with my ex-husband, but nothing worked. He knew I was at his mercy because there was nothing my Government or country would do to bring Huey safely home. He laughed at me and told me if I want to see Huey on a regular basis I would have to live in Amman. We left—my mother and I left Jordan the day before Thanksgiving, a holiday I dreaded because, frankly, I had nothing to be thankful for.

When I returned home, I was frustrated, depressed and furious. How come no one could help poor Huey? He was a hostage in a foreign land despite his dual nationality. He did not know anything about Jordan, its language, its people and its powerful religious. He was as much of an American as me.

I thought that I could not be the only parent going through this hell. Over the Christmas holidays, I learned I was not alone. WGN, in Chicago, ran a special about an Illinois mother, Patricia Roush, who had her children abducted to Saudi Arabia and Senator Alan Dixon, of Illinois, was assisting her. I called his office and spoke at length with Sarah Pang. I told her I wanted to start a support and lobby group for parents like Pat and myself. During 1987 I spread

the word and parents joined forces with senator Dixon to grab the Government's attention and address this grave, but neglected, issue.

In addition to Senator Dixon, I contacted tons of other officials to help in my case. I wrote and received a reply from Jordan's Queen Noor, who is also a former American. Her letter said that Huey could not leave Jordan without permission from his father, and his father was the abducting parent. I also contacted former President Carter, President Reagan, and dozens of other Senators and Jordanian and Muslim officials. I am afraid all my contacts could not insure Huey's return.

I went back to Jordan in July 1987 with my mom. This time Huey did know who I was, but we had to communicate only in Arabic. He did not remember anything about his life in America. Yet, he knew Bassam was keeping him from me. At one point, he clawed at the door when we had to leave one afternoon. He even whispered in my ear that he wanted to come to America with me. And I told him in English and in Arabic that I would rescue him someday, somehow, and somehow.

Although the Hague Convention on the Civil Aspects of International Child Abduction will not directly affect my case, because Jordan does not even recognize parental kidnapping as a crime, I urge you to approve the legislation that would implement this important treaty. The Convention reflects a strong worldwide concern about the harmful effects parental kidnapping has on children and the need to deter such conduct.

And I would like to take just a second to mention a case that I— one father who has submitted written testimony, Alan Hershey, from New Jersey. Just a brief paragraph. It says:

"Rapid action is needed. I am submitting a motion against the Czechoslovakian courts requesting approval for Lenka's travel to my home this summer. Signature of the Hague convention provides the basis for my argument that the Czechoslovak court should this time grant its approval. Delay of even weeks in congressional action on implementing legislation or the President's signature of the Convention can mean for me losing a chance at success for this summer and waiting another full year before I have any chance of bringing my daughter home and enjoying a simple pleasure like going shopping or making breakfast for her."

The Convention was negotiated in 1980 and ratified by the U.S. Senate in 1986. It has been long enough. At least eight countries have the Convention in force. The United States should not lag behind the rest of the world and should implement this treaty, which would provide hope and assistance for the left-behind parents. Please pass this legislation without any delay. Many parents could be reunited with their children once the treaty becomes law. Politicians and officials always talk about strengthening the American family. Well, now is the chance. Please don't let us down.

Mr. FRANK. Thank you. Just a couple of brief points here. First, statements that we have gotten from Dr. Cunningham and Mr. Hershey, if there is no objection, will be made a part of this official record, and I appreciate your mentioning them.

[The statements of Messrs. Hershey and Cunningham follow:]

The House Sub-Committee of Administrative Law and Government Relations  
Hearings on the Hague Convention on International Child Abduction:  
February 1988

Information on the Abduction of the U.S. citizen children Carlos and George  
Cunningham.

SUMMARY

In late 1983, Spain decided to aid and abet the abduction of two American children, Carlos and George Cunningham, who are not Spanish citizens, and who were the subject of pending proceedings in a New York Court. This decision was taken to prevent them from receiving psychiatric examinations in New York and was in direct violation of a court order that forbade their removal from the State of New York.

This violation of international law and American sovereignty was followed by Spain: (1) refusing to provide any protection to the children that it had helped kidnap, even though they were in grave moral danger, (2) starting off an action for separation, initiated by the same person who had been divorced on her own petition, (3) claiming that the improper conduct of Spanish officials on American soil was a matter for the Spanish Foreign Ministry (rather than for the American Government), (4) conducting court proceedings where the defendant was denied access to his court files, where the documents contained serious mistranslations, and where secret access to a Supreme Court judge apparently took place, and, finally, (5) refusing to accept and enforce duly entered New York divorce and custody decrees.

The matter has been referred to the European Commission of Human Rights where impartial and respected judges from different democratic European countries will be judging Spain's assault on the human rights of Carlos and George Cunningham and their father, and on the legal system of the United States.

However, the abduction of American citizens from American soil with the help of agents of a foreign government should not just be a matter of concern to European democracies, but primarily of concern to the United States itself. Having given Spain every chance to explain its behaviour and to restore legality, and having been met by the assertion that documents requested, such as the children's passport applications were "classified", the American Government has now taken the decision to respond to Spain's aiding and abetting the abduction of its citizens. The matter has been referred to the appropriate international forum - the Vienna Follow-up Meeting to the Conference on Security and Co-operation in Europe (the Helsinki Process) which resumed on January 25th 1988. Clearly, Spain behaved in a way that would not be accepted for a country that did not claim to be a friend of the United States.

This case, involving a European country with some valid claims to being a democracy, but whose courts do not bear comparison with those of the United States, illustrates the absolute necessity to have the future of American children decided in American courts. This can best be done by the United States' ratifying the Hague Convention.

The House Sub-Committee of Administrative Law and Government Relations  
Hearings on the Hague Convention on International Child Abduction:  
February 1988

Information on the Abduction of the U.S. citizen children Carlos and George  
Cunningham.

Presented by their father, Dr Simon Cunningham,

Introduction

I am submitting this information to illustrate to your sub-Committee the necessity for the United States to ratify the Hague Convention. The case of the abduction of my children shows the extent to which foreign governments and courts are prepared to go to defy American law and to deny American citizen children their basic human rights - to grow up in their own country, protected by their own courts. Ratification of the Hague Convention would go a long way to ensuring that the future of abducted American children would be decided in the courts of the United States and not in those of another country.

The particular case presented below does not concern a country that can make no valid claim to being a democracy, or to respecting international comity and the rule of law, but rather it concerns a country that has recently adopted many democratic institutions - Spain.

The role of the Spanish Government in the abduction of the American citizen children Carlos and George Cunningham, in direct violation of American law

My children, Carlos and George, were born in New York on 19th September 1977 and 30th December 1980, respectively. They are American citizens and lived all their lives in New York City. Carlos went to the local school and only spoke English. Their mother, my ex-wife, is Spanish but the children did not have Spanish nationality, which by Spanish law only came through the father.

In September 1983, my then wife sued for a divorce in the Supreme Court of the State of New York. She had no grounds for complaint and, as those accusations she made were totally unspecified, I was aware that her petition would be rejected. However, knowing that her intention was to take the children to Spain, with or without my consent, or even that of the New York Supreme Court, I petitioned the Court to enter an order enjoining her or her agents from removing the children from the jurisdiction. The court entered a temporary order to this effect on 18th October 1983.

To further ensure that the children were not abducted from the United States, I took their American passports into my custody, and verified personally at the Spanish Consulate in New York that the children could not be given Spanish passports, or be included on their mother's Spanish passport. I was assured twice that they could not be.

In November 1983, my son, Carlos, began to talk to me of witnessing the egregious and highly immoral activity of his mother. It is my understanding now that it is virtually impossible for a child of six years to invent

anything about sexual conduct, but at the time I was extremely surprised and went with him to the Principal of his school, P.S. 4, in Staten Island, to see if this professional could tell whether he was telling the truth or not. Carlos repeated his account in front of the Principal, and also drew pictures to illustrate what he had seen his mother do. The Principal immediately told me to advise my lawyer, which I did, telephoning from his office. In turn, my lawyer advised the court of Carlos' statements, and on 21st November 1983 it entered an order that psychiatric tests should be performed on the children.

I told Carlos that he had to tell the truth and that I would protect him at all times. However, at this point, the Spanish Government intervened. My then wife comes from a very wealthy and influential family in Spain - for instance, the brother of her aunt is General Valenzuela, who is or was the King of Spain's military adviser. Through family connections, the Spanish Foreign Ministry issued instructions to the Spanish Consulate in New York to give Spanish documents to my then wife for the children to enable them to be removed from the United States. On 1st December 1983, a Spanish passport was given for my son Carlos, and George was included on his mother's passport.

The Spanish Consul in New York, aware that there were pending divorce proceedings in New York, suggested that she draw up a declaration in the Consulate in which she justified her abducting the children. She did so on 5th December 1983. On 7th December 1983, the day before the first of the series of psychiatric tests was scheduled to be performed, she removed the children to Spain, using the Spanish documents.

After her refusal to obey a court order entered on 14th December 1983 that she return to the New York Supreme Court for a hearing on 19th January 1984, and after she did not reply to the counter-claim duly served on her lawyer, the Supreme Court of the State of New York, on 16th April 1984, entered a divorce against my then wife, granting custody of the children to me. A further hearing was held on supplementary matters, in order to give her another opportunity to return to the United States with the children. She did not return and a further judgment was entered on June 1st 1984 concerning these matters.

#### Indefinite proceedings in the Spanish Courts

The decision to violate American law and sovereignty and to aid the abduction of two American citizen children could only have been made at the very highest levels in Spain. An indication of this is that the Consul in New York received instructions from the Foreign Ministry. This high level involvement helps explain the subsequent efforts by Spain to prevent at all costs the return of the children to the protection of the American courts.

After the necessary paper-work had been prepared by my Spanish lawyer, the Spanish Supreme Court was petitioned, in October 1984, to recognize and enforce these judgments. We were able to establish that reciprocity existed between the courts of the United States and the State of New York, and Spain, and that, therefore, by Spanish law, these judgments should be enforced.

In July 1985, the American Embassy in Madrid, concerned about the welfare of my children and anxious to know how Spanish passports had been given to them, sent a polite Note Verbale to the Spanish Government, mentioning the concern of several Senators in the case. This was met with a "brusque" response from the Spanish Foreign Ministry. I enclose both documents.

Further, the Spanish Foreign Ministry, even though it had been officially told by the State Department that an American divorce existed, asked the State Department in October 1985 to serve me - whom it described as married - with Spanish separation papers in an action initiated by my ex-wife, who, it must be emphasized, had been divorced on her own petition. This request came from the same Department of the Ministry which had earlier replied to the Note Verbale. The Department of State complied with this request, and the papers were served on me through the Department of Justice.

I went to Spain in December 1985 to see my children and to explain to the Spanish Family court that was hearing the separation action that I was divorced and that custody had been entrusted to me by a New York court. Yet this Spanish action was not dismissed, but instead, predictably, and without any hearings whatsoever, found in favour of my ex-wife in a judgment dated May 1987. It is a measure of the seriousness of the Spanish courts that the Spanish Family Court judgment referred to me as being divorced and to my ex-wife as being still married.

Meanwhile, in February 1986, the Ministerio Fiscal (the approximate equivalent of the Attorney-General) had given his opinion that Spain had no jurisdiction over the marriage, and that the judgments should be enforced.

In March 1986, the Spanish Supreme Court refused to recognize the American divorce in a ruling which constituted, as Senator Alan Dixon expressed it in the attached letter of April 23rd 1987 to the Spanish Prime Minister, Sr. Don Felipe Gonzalez Marquez, "an assault on the competency and integrity of the New York judges and the U.S. legal system". In spite of the seriousness of the matter, no reply was ever sent to this letter - the legal and moral points made were simply unanswerable.

This decision of the Spanish Supreme Court has been on appeal in the Spanish Constitutional Court since May 1986. By its own laws, this court should have reached a decision in October 1986. It has not done so, and has not provided me with any explanation as to why it has not. I do not believe that it is the intention of the Spanish courts to ever reach a decision.

Action in the European Commission of Human Rights against Spain's assault on the American system of justice

At the present time, I am completing the Application sent to me by the European Commission of Human Rights. This decision by the Secretariat of the Commission to forward me an Application is itself very significant. The Commission has the power to over-ride national courts and I am petitioning it to order Spain to return the children, to declare null and void all her court decisions regarding me and my children, to pay for their full educational and psychiatric rehabilitation, and to pay compensation for the damage done to them and to me by its decision to help abduct them in December 1983.

I list below some of the features of the actions in the Spanish courts that show that they cannot be compared with those of the United States:

1) In spite of numerous requests, I still have not received copies of the evidence produced by my ex-wife. The Spanish Ministry of Justice refused to supply me with my court documents, but said that it would supply them, if requested, to the European Commission of Human Rights.

- 2) The Spanish Supreme Court, according to my ex-wife's account, allowed her a private interview with the judge.
- 3) Many of the documents produced in the Spanish courts contained serious mistranslations.
- 4) No hearings whatsoever at which I was present and able to see and contest the evidence were ever held.
- 5) The Spanish courts are trying to deny me my right to defend myself, but instead are insisting that I use - and pay for - a Spanish lawyer.
- 6) The Spanish courts are apparently able to make decisions without citing precedents or authority.

I cite these irregularities in their proceedings, because it is these same courts that have decided to defy the American system of justice, to try me for a separation in Spain when I have already been divorced in New York, and to grant custody of two American children to the person who abducted them from the United States in violation of a court order, and the day before psychiatric examinations.

#### The violation of my children's human rights

I cannot provide a full picture of what has happened to my children since their abduction to Spain, because I have in effect been denied access to them. For the first two years, the phone was slammed down whenever I called. Carlos apparently had a nervous break-down as a result of his abduction. Both children are very backward for their years, and extremely excitable and uncontrolled. Although the Spanish courts attempt to justify their being detained in Spain by the need for psychiatric treatment - which is what they would have received in the United States - there is no court order to this effect and no such help will be given. As the State Department was able to ascertain, there are simply no social welfare agencies in Spain to look after disturbed children.

Moreover, the children are being brought up not speaking English, despising the United States and being taught that their father is some kind of violent drunk. When I saw Carlos in December 1985, he told me that he was continually telling his mother and grand-parents that his father was not a drunk. He was a frightened and very disturbed little boy, taught to believe things about his father that he knows to be untrue, and to forget things about his mother which he knows to be true.

The life that the children lead is one of virtual prisoners as their custodians fear that I will restore legality by enforcing the New York custody orders and returning my children to the care and protection of the courts of New York. They intend to make sure that they do not receive psychiatric treatment in a non-coercive environment.

#### Action by the United States Government

International and American law in this matter is clear - the agents of a foreign government operating on American soil are not allowed to violate American law. Decisions concerning the American citizen children, Carlos and George Cunningham, were properly being taken by an American court in late 1983, and Spain decided to intervene in this judicial process. One specific treaty that Spain violated and which the United States is a party to (as

distinct from the European Convention on the Protection of Fundamental Freedoms and Human Rights) is the Helsinki Final Act whereby States undertake to "refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating state".

In February 1987, I brought to the attention of Congressman Steny Hoyer, in his capacity as Chairman of the Congressional Commission on Security and Co-operation in Europe, Spain's violation of the Helsinki Final Act. Every opportunity was then given to the Spanish to explain their behaviour and to resolve the matter caused by their aiding and abetting the abduction of my American citizen children. Instead, in September 1987, during a meeting requested by the Congressman, and also by Senator Alfonse D'Amato, and attended by an official from Senator Dixon's office, the Spanish Embassy refused to produce the passport applications for my children and other related documents. The Consul claimed that they were "classified". He also said that I should trust Spanish justice. I explained that a country which had acted in violation of international law in helping to kidnap two children had no right to exercise jurisdiction over them, but should return them forthwith.

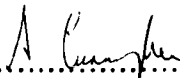
I have recently been informed by the State Department that the decision has now been taken to raise the matter officially at the Vienna Follow-up Meeting on Security and Co-operation in Europe. It is my understanding that this is the first time that an alleged violation of the Helsinki Final Act by an allied country will be raised by the United States. Clearly, in the case of my children, if they had been abducted to a socialist country on papers improperly issued to them (and they are as much Spanish as they are Soviet or Bulgarian citizens) they would have been returned the next day.

The information that I am presenting does, I believe, serve to illustrate the necessity to have the future of American children decided in American courts, where due process is guaranteed, and where intrigue and favoritism are not present. This would occur if abducted American children were returned through the Hague Convention rather than through domestic proceedings in the courts of the country to which they have been abducted.

Finally, and I believe very importantly for other abducted American children, the fact that the United States is prepared to raise the matter of Spain's violating American law and sovereignty in an international forum serves notice on all countries of whatever ideological persuasion or political system that the welfare of all its citizens - including and especially abducted and defenceless minors - is a matter of grave concern to it. In this regard, ratification of the Hague Convention would be a very major step forward.

The factual assertions in this document can be substantiated.

Signed:

  
 .....  
 Simon Cunningham.  
 151 Carlyle Green  
 Staten Island, New York 10312



(MO56)

Copy to Case

No. 634

NOTA VERBAL

La Embajada de los Estados Unidos de América saluda atentamente al Ministerio de Asuntos Exteriores y tiene la honra de solicitar la colaboración del Ministerio en obtener un informe detallado de las investigaciones llevadas a cabo por las autoridades competentes en relación a los menores Carlos y George Cunningham, ciudadanos no americanos, nacidos en los Estados Unidos de padre británico y madre española.

Según consta en los archivos de esta Embajada, Carlos y George Cunningham fueron, al parecer, ilegalmente sacados de los Estados Unidos de América por su madre, Elena Caballero Belle, en el mes de abril de 1984. Carlos y George fueron documentados como españoles por el Consulado español en Nueva York. Dicha documentación, según el Sr. Cunningham, fue obtenida de forma fraudulenta por la madre de los menores, ya que al Sr. Cunningham le había sido concedida la custodia de los menores por un Tribunal de Nueva York.

Dado la serie de hechos que rodean a la Sra. Caballero, que fueron comprobados por el Tribunal de Nueva York, esta representación está profundamente preocupada por el bienestar y la situación moral en la que pueden encontrarse los menores.

Enclome 56

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El Dr. Cunningham ha mantenido contactos regulares con el Consulado español en Nueva York desde principios de 1964, en relación con este asunto, por lo que el Ministerio puede tener copia de dichas comunicaciones. La Embajada de los Estados Unidos agradecería una pronta respuesta sobre este asunto, dado el interés existente en este caso de varios Senadores norteamericanos.

La Embajada de los Estados Unidos de América aprovecha la oportunidad para renovar al Ministerio de Asuntos Exteriores las seguridades de su más alta consideración.

Madrid, 5 de Julio de 1965.

AL MINISTERIO DE ASUNTOS EXTERIORES, MADRID.

CLEARANCE: CONS: 2170124 CONS: 2172711  
Initialed by CONS: 2170124

CONS: jgr

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Translation of the Note Verbale sent from the American Embassy to the Spanish Government, July 1985

No 634. Note Verbale

The Embassy of the United States presents its compliments to the Ministry of Foreign Affairs and has the honour of requesting the Ministry's collaboration in obtaining a detailed report of the investigations undertaken by the competent authorities in relation to the minors, Carlos and George Cunningham, American citizens, born in the United States to a British father and a Spanish mother.

As has been established in our Embassy's records, Carlos and George Cunningham were, it appears, illegally removed from the United States of America by their mother, Elena Caballero Bello, in April 1984. Carlos and George were documented as Spaniards by the Spanish Consulate in New York. Such documentation, according to Mr Cunningham, was obtained in a fraudulent manner by the mother of the minors, since Mr Cunningham had been given custody of the minors by a New York court.

Given the seriousness of the accusations against Mrs Cunningham, which were proven by the above mentioned New York court, this party is profoundly concerned for the well-being and the moral situation in which the minors might be found.

Mr Cunningham has maintained regular contact with the Spanish Consulate in New York since early 1984 in connection with this matter, for which the Ministry can have copies of his communications. The Embassy of the United States would appreciate a prompt reply about this matter, given the interest that in the case that several American senators have.

The Embassy of the United States takes the opportunity to extend again to the Ministry of Foreign Affairs assurances of its highest consideration.

Madrid, 5th July 1985.

(N.B. The Embassy confused some points - the children were removed in December 1983, and custody was given to me in April 1984. What was illegal about the issue of the passports was not that I had custody but (1) the children are not Spanish, (2) they were the subject of a court order and (3) the Spanish Consulate was aware of pending legal proceedings. I would add that at this time, in July 1985, I assumed, since the Spanish Consulate had misinformed me, that my ex-wife had bribed a Consular official. It did not occur to me that the truth of the matter was much more serious - that orders had gone out from the Foreign Ministry to grant Spanish passports to my American citizen children; this information only became available in December 1985).

## Memorandum

DATE: July 11, 1967

TO: COMS - Bernard J. Fennell

SUBJECT: Cunningham Child Custody Case

FROM: THE FILES

MOSY

DECLASSIFIED

I spoke with Vicente Ramirez Montesinos, Subdirector General de Asuntos Consulares, Ministerio de Asuntos Exteriores, regarding the Cunningham child custody case. I asked him if the Foreign Ministry had seen the list of charges Cunningham had levied against the Spanish Consul in New York and against his ex-wife now here in Spain. Ramirez Montesinos stated brusquely that "there are courts here in Spain and the matter is before the proper court authorities." He had "no intention of commenting on the allegations of misconduct against a Spanish citizen" and that "the matter of improper official behavior by a Spanish diplomat was something for the Ministry (of Foreign Affairs) to decide." He added that he would "communicate with the Embassy in the proper channels at the appropriate time" should there be something to report on this case in the future.

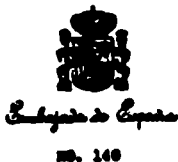
COMS:BJFennell:fn

DECLASSIFIED *Bush 57*

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The Embassy of Spain presents its compliments to the Department of State and has the honor to enclose L. for Registry NO. 77,667, issued by Don Antonio GONZALEZ VASQUEZ, Magi/Lore-Judge of the Court of First Instance number twenty-two of Madrid, Spain, concerning to the suit filed by Mrs. Elena CHAMBERLIN BELLO, against her husband Mr. Simon CHAMBERLIN. Documents have been submitted in duplicate with the corresponding translation indicating the assistance being requested.

Enclosed the Department of State will also find check payable to the order of the Treasurer of the United States for the amount of \$ 15.00.

The Embassy of Spain avails itself of this opportunity to refer to the Department of State the occurrence of its highest consideration.

Washington, D.C., October 23, 1908

*Para V. H. M. Enclosure:  
L. for Registry no. 77,667  
& Check of \$15.00*

Department of State  
Protocol Section  
Washington, D.C.



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10/27/1908

ALAN J. DIXON  
ALMO'S

COMM-FBI  
ARMED SERVICES  
BANKING, HOUSING, AND  
URBAN AFFAIRS  
SMALL BUSINESS

# United States Senate

WASHINGTON DC 20510

April 13 1987

Hon. Excellency Felipe Gonzalez Marquez  
Prime Minister of Spain  
Madrid, Spain

Excellency

I am seeking your assistance with a matter of extreme concern to me, and to many to my colleagues in the United States Senate. I am contacting you regarding the abduction of two young United States citizens, Carlos and George Cunningham. Carlos and George were abducted by their mother, Elena Cabellero-Bello, and are currently residing in Spain in direct violation of U.S. Court orders. I am respectfully requesting your assistance with returning George and Carlos to their father and legal guardian, Mr. Simon Cunningham, in accordance with standing U.S. Custody Decrees.

Carlos and George Cunningham were born in the U.S. in 1977 and 1980 respectively, living here all of their lives until the abduction. In 1983, Elena Cabellero-Bello began divorce proceedings in New York State. Mr. Cunningham was confused by his wife's apparent desperation to obtain a divorce, until his son, Carlos, told of witnessing illicit and unnatural sexual activity of his mother. Immediately upon hearing the story, Mr. Cunningham took Carlos to his headmaster and pediatrician in an attempt to verify the story with experts. After Carlos repeated the story to authorities, the Supreme Court of the State of New York ordered psychiatric examinations. The day before the psychiatric exams were to begin, Ms. Cabellero-Bello abducted the children, removing them from the Court's jurisdiction in direct violation of the law.

Since the Court has prohibited the removal of the children from its jurisdiction, Ms. Cabellero-Bello was not able to use U.S. passports to abduct the children. She therefore, enlisted the help of family in Spain to illegally obtain Spanish travel documents. As you know, because the children are U.S. citizens, not Spanish, they are not entitled to Spanish travel documents. However, after pressure was applied in Spain by Ms. Cabellero-Bello's family, the Spanish Consul in New York allegedly issued travel documents for George and Carlos. Directly aiding in the subsequent abduction of the children.

ALAN J. DIXON  
ALMO'S  
WASHINGTON, D.C.

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His Excellency Felipe Gonzalez Marquez  
 Prime Minister of Spain  
 Madrid, Spain  
 Page 2

After the abduction, Mr. Cunningham obtained a divorce decree and sole custody of his children. When Mr. Cunningham applied to the Spanish Supreme Court, requesting recognition and enforcement of the New York Decrees, the Administrative Fiscal issued an opinion stating that the U.S. Custody Decrees should be enforced in Spain. The Court, however, refused to do so in a ruling issued in March of 1986. This ruling was based on an assault on the competency and integrity of the New York Judges and the U.S. legal system, rather than on legal principle.

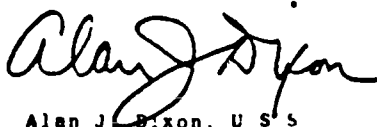
The Supreme Court decision is currently on appeal with the Spanish Constitutional Court. I am extremely concerned by the length of time it is taking for the Court to overturn this improper decision, and return the children to their legal custodian, Simon Cunningham. Irrespective of the continuing proceedings in Spain, it must be remembered that the very presence of the children in Spain is illegal and that they should have been returned without having to pursue additional and redundant court proceedings in Spain ;

As you will see by the enclosed documentation on the Cunningham case, Carlos and George Cunningham were abducted on December 7, 1983 with the help of the Spanish Government. The continuing lack of cooperation from the Spanish legal system is further aiding and abetting in the concealment of these U.S. children, and cannot be tolerated.

Under the long tradition of comity that our two nations share, I appeal to your sense of justice and request your assistance in resolving this matter expeditiously by returning Carlos and George Cunningham to their Country and to their father.

Thank you for your assistance.

Sincerely,



Alan J. Dixon, U.S.S.

SUMMARY OF PRESENTATION OF ALAN M. HERSHEY  
ON THE HAGUE CONVENTION  
TO SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENT RELATIONS  
U.S. HOUSE OF REPRESENTATIVES  
ALAN M. HERSHEY  
February 3, 1988

In December 1983, my 3-year old daughter Lenka was taken to Czechoslovakia by her mother, in violation of a U.S. court order. I have been to Czechoslovakia ten times since then, trying to maintain contact with my daughter, and trying to get the Czechoslovak authorities to allow my daughter out of Czechoslovakia at least for extended summer visits in my home.

The Czechoslovak courts recognize my daughter only as a Czech citizen, although she was born in the U.S. (her mother was Czech). They have granted me the right to visit my daughter for a few weeks each year, but only in Czechoslovakia. It has been difficult to maintain even that much contact; for over two years my ex-wife refused to release my daughter to me, and it was not until 1986 that the Czechoslovak authorities took effective enforcement action just to allow me normal visits with Lenka. Between my visits I have virtually no contact with my daughter; her mother destroys all letters that I send her, and prevents telephone communication.

The Czech courts have granted me repeated hearings, but have refused to grant the permission I need for an exit visa for my daughter. The explicit reason for this refusal is that there is no guarantee Lenka would be returned from a visit; the Czech judge has told me directly that if the U.S. signed the Hague Convention, there could be no obstacle to allowing my daughter to visit me in my home. I am trying to bring her here regularly for summer visits, and hope that in the long run a way would be found for her to stay here for even longer periods without severing her ties to her mother and other relatives in Czechoslovakia.

The Hague Convention must be signed as early as possible this spring. In my case, delay of even a few weeks can mean delay of a whole year before I can bring my daughter home. My present motion to the Czech courts asking for a U.S. visit for my daughter in summer 1983 will go to hearing this spring; only if the Hague Convention has been signed can I argue that the foundation has been established for a guarantee of Lenka's return to her mother. Without that argument, there is no chance that Lenka will be allowed to leave Czechoslovakia.

Rapid signature is also essential because summer is the peak period of child abductions. If the Convention is not in place before summer, more children will be lost, and left unprotected by the Convention's provisions that can win their return.



Mr. FRANK. With regard to speed, I owe people an apology. I did not sufficiently understand the urgency of this last year and we delayed a little. That will be remedied as quickly as we can.

I would say this, if I can address myself to the State Department. As I understand it, there is no technical legal obstacle to our filing the ratification, but the Administration, understandably, didn't want to do that without some assurance that we would be in a position to live up to our obligation. By the time this bill gets out of full committee, and knowing that the Senate has already passed it, I would think we would have enough assurance for the Department to begin that process without waiting for the formal signature. That is, I think we are going to be in a position where a reasonable judgment can be made that we are going to have that bill ready. There was some reference to a two- or three-month period. I don't think we have to wait until the bill is signed to start that clock, and I would hope that once we give evidence that we are moving, and we have a 25th of February reporting date and we will have this bill pass the House in March.

Yes, Mr. Pfund?

Mr. PFUND. Mr. Chairman, I think the Senate will have to pass the bill as well in some way.

Mr. FRANK. Is that a technical legal requirement or is that a prudential requirement?

Mr. PFUND. The action by the senate was on the Convention. It gave advice and consent to the U.S. ratification.

Mr. FRANK. I understand that. But what I am saying is that the Senate also included this legislation in the State Department authorization. Now, I realize that died when it was amended, but that is pretty good evidence that the Senate is going to do it. And what I am saying to you is that if you need not wait technically for the bill to actually be signed and you have got a two to three month clock that you talked about, once we have gotten this out of full committee and it is clear to you, as it should be, that we are going to pass a bill, I would hope you would begin that clock on the ratification process because there is no need to add on an extra couple of months. And I see some nods of affirmation. That would guarantee that we would be ready by the beginning of the summer. We will do our part; we will move this thing. I would think by the time we get this out of the full Judiciary Committee, unanimously I would anticipate, and it has already passed the Senate as part of the State Department authorization, you would have the sufficient moral certainty to go ahead.

The other thing I would hope would be—and I appreciate your testimony here—is that we would, once we have clean hands ourselves in this matter, make this an aspect of our foreign policy. It is not going to be determinative in every single case, but a refusal of a country to sign this treaty would, I think, be something which we would take into account. Jordan is a country with which we have had a kind of a frustrating relationship. A lot of us would like to see the relationship improve. It is very important in terms of the Middle East. Jordan looks for arms sales from time to time. I don't see any reason why a refusal to sign the treaty shouldn't be counted heavily against—not conclusively, but I would think that when

other nations are looking to us, not an absolute conditionality but some kind of linkage would be appropriate.

Yes, Mr. Pfund?

Mr. PFUND. I might say that the feeling of the countries that negotiated the Convention in 1980 was that in all likelihood the Shari'a law countries would not find it possible to become a parties to a Convention essentially negotiated among European countries and other countries of common law and civil code traditions.

Mr. FRANK. Let me ask you if any effort is being made, once we have done this—and I realize we have to get ourself in order—to negotiate with them a parallel convention? There would be nothing to prevent that, which would have some deviations but it would be better than nothing. And I think that I would urge that we do that, and I appreciate your pointing that out to me. If it is not appropriate, and if it wasn't drafted with their being able to accede that in mind, there certainly ought to be something else that could operate and that could improve the situation, and we, I think, will be looking to that. You and your colleagues, and I say this to the witnesses now at the table, have sensitized us to a degree that we needed to be, and I appreciate it.

I have no questions. I particularly appreciated the legal points that you made and the factual situation. Together it is a very effective piece of testimony.

Mr. Shaw?

Mr. SHAW. Mr. Chairman, I would like to join you in complimenting these two witnesses, which have certainly brought a new dimension to this particular hearing.

Mr. Lloyd, with regard to the actual mechanics of the legislation, what documentary evidence would you be likely to submit with a petition—I guess you would call it a petition—under this particular piece of legislation? And I wish you would address the question of that portion of the bill as to the admissibility of documents and particularly without any need for any legalization or authentication. That is section 104.

Mr. LLOYD. Congressman, in some sense I would have to defer to the State Department because of their actual practical experience in terms of that, since they are the ones that initiated the United States ratification of the Hague Convention abolishing of the Requirement for Legalization for Foreign Public Documents. However, as a practical matter, the attorneys that we have been in conversation with tell us that they try to have a certified copy of the court order of whatever jurisdiction that would be just as a matter of standard practice, that it is nothing particularly unique.

Mr. SHAW. I am a little concerned with that language because it does seem that you should have to at least bring certified court orders in in order to get these things moving, because at this point it is an ex parte action, as I understand the way the thing works.

Mr. LLOYD. That would be correct.

Mr. SHAW. It is a powerful piece of legislation, and the fact that this thing is being solved ex parte without certified copies of documents is a little frightening to me. Do you share that concern?

Mr. LLOYD. It would be ex parte with respect to requesting the assistance of the Central Authority in the nation where the child was presumed to be.

Mr. SHAW. At what point is the child retrieved for hearing?

Mr. LLOYD. The child would be retrieved once the child was located in a particular jurisdiction. I mean, one would not want to file in 51 jurisdictions, either the State courts plus the Federal courts for each jurisdiction. One would request the assistance of the Central Authority in actually locating the child. That would, obviously, have to be in a way that does not trigger the further disappearance of that parent. But once the application would be made to that court the normal service of process should certainly be attempted upon the respondent along I would hope with some mechanisms to try to maintain the appearance of the child, the retention of the child within that jurisdiction so that we do not have the situation Ms. Planells described, and other parents have had, a situation where the abductors merely moved to another jurisdiction.

The Central Authority can, obviously, request the assistance of the home nation of the child as a question of law as to the proper procedures for ascertaining that the documents that were submitted would, in fact, at least have the initial appearance of authenticity for admissibility.

Mr. FRANK. I am going to reconsider one of my points. I think the Bar Association representative, one of them had some specific information on this point. And now that it has come up, if you wouldn't mind coming forward. Because I caught him off because it didn't seem to be something in issue, but as long as it is going to come forward, I will ask our Bar Association representative to address that. I believe that is one of the areas where you have had some expertise.

Mr. SCHWARTZ. Well, the only thought I had on it was that the language in the bill closely resembles one of the Hague Procedural Conventions, the Hague Convention on the Abolishing of the Requirement for Legalization of Documents. In a sense, I don't even know why this is in the bill because we have had a Convention, but I think it may be included to make certain that—for completeness purposes.

Mr. FRANK. Mr. Pfund had something on that.

Mr. PFUND. Mr. Chairman, thank you. The provisions of Articles 23 and 30 of the Convention state that no legalization or similar formality may be required, and that applications to the Central Authority and petitions to the judicial or administrative authorities under the Convention together with documents and other information appended thereto or provided by the Central Authority "shall be admissible in the courts or administrative authorities of the contracting states."

It is an obligation that for admission documents do not require legalization or a similar formality. That obligation is provided by the Convention in these two provisions, Articles 23 and 30. And our effort here in the bill was to put into one provision this requirement of the Convention for the sake of uniform practice and understanding of this provision throughout the country.

Let me tell you what the advantage of that provision is. For instance, if the U.S. left-behind parent from the State of New York were to want to make an application for return of a child to another country party to the Convention, in order to get legalization by the embassy of the country where the child is located of the doc-

uments to be sent over the person would have to take the application, complete it, get it notarized, get a court clerk to certify the notarization, get the Secretary of State of the State of New York to authenticate the court's certification, get the State Department to authenticate the State Secretary of State's seal, and then get the embassy of the country where the child is located to provide the legalization which makes the connection between the two systems. It is that kind of thing that we were trying, at the time we were negotiating the Convention, to spare the left-behind parents from in the interest of paperwork reduction.

Mr. SHAW. I can understand that. But it does seem that the least we should have is certified court documents attached without the necessity for all the rest of this stuff on it. Maybe that is something we can —

Mr. FRANK. Are you trying to find out if the treaty prohibits that, the requirement of certified court documents?

Mr. PFUND. No. No. It says no legalization, the Convention word for what we call authentication which is that end process for which these other steps that I mentioned are prior steps.

Mr. SHAW. Most of these people have certified documents in their possession anyway, so they don't have to go back to court.

Mr. PFUND. Yes.

Mr. SHAW. Suppose we were to require certification and then there is kind of a heavy burden to establish an exception if you couldn't. We could, I think, do that. Not rule it out absolutely if it wasn't certified, but put a fairly heavy burden on you to show why you couldn't get it certified. Maybe there is always that exception allowed in the rules.

Mr. PFUND. Unless it were an original court document.

Mr. SHAW. Let's turn the case around, and a signatory to the treaty now is trying to get a child out of the United States. As a lawyer for the parent living here in the United States, perhaps you are looking at a situation, as the lady just spoke of, in Jordan and you are absolutely terrified to think that that child may be going back to go under the courts of that particular country. How do you defend yourself from one of these things?

Mr. PFUND. Well, Congressman, the Convention provides that countries that in 1980 were member states of the Hague Conference on Private International Law (which developed the Convention) may ratify the Convention and it will enter into force between them and all countries that have previously ratified or subsequently ratify. But the countries that were not member states of the Hague Conference in 1980, and no Shari'a law country, I believe, was a member state at the time, can only accede to the Convention. If such a country accedes to the Convention, it comes into force between the acceding country and a country party to it as ratifying state only if the ratifying state takes an affirmative act to bring it into force between itself and that acceding country.

That was a way for countries that were Hague Conference member states at the time the Convention was negotiated to have some control over the numbers or the types, if you will, of countries with whom the Convention would impose upon them an obligation to return children to those acceding countries possibly having very different legal systems. And it is one reason why even

if a country from that legal tradition were to accede to the Convention there might be some hesitation on the part of some that the United States should take the affirmative step to commit this country to return children to a country with such a different legal tradition that it might deprive the parent in this country of the right ever to see the child again.

Mr. FRANK. I think you misinterpreted, or you answered, maybe, a part of the question. But it wasn't Jordan specific. It was with another member, with a signatory.

Mr. SHAW. We are talking about a signatory country. How would you—or perhaps someone else would like to answer that. How would you defend yourself as a parent who didn't want the child to—

Mr. FRANK. Where the complaining parent was of a signatory nation.

Mr. PFUND. Well, you would try first of all to overcome the petitioner's efforts to prove that he or she had legal custody—

Mr. SHAW. Well, now at what point?

Mr. PFUND. —was exercising those custody rights, and had not abandoned them in some way.

Mr. SHAW. All right. Where do you go to do that?

Mr. PFUND. Well, normally, in this country I suspect it will be in a court. In many of the European countries—

Mr. SHAW. No. No. No. The petition is coming from overseas now. It is coming towards us.

Mr. FRANK. The petitioner would choose a court and you wouldn't have any choice.

Mr. PFUND. You are stuck with it.

Mr. FRANK. You would find yourself in a court of the petitioner's choice.

Mr. PFUND. What happens is the petitioner files the request probably initially with the U.S. Central Authority, which will be in the State Department. The State Department facilitates the obtaining by the petitioning parent of a counsel in the jurisdiction where the child is located. It may have to help find or locate the child and inform State authorities of the case. In most cases in this country, with our adversarial approach to this type of thing, I suspect there will be a need to go to court. In many foreign countries, European countries, the government is able to state "we have become a party to the Convention and that is the end of child abductions," and people accept it. An official goes to them, tells them the "Convention is in force, you have abducted a child, hand it over," and they do.

Mr. FRANK. But you would have to go to court to defend and you would either have to prove that the complaining parent did not in fact have legal custody without retrying the merits or you would have to show by clear and convincing evidence that you could claim an exception; namely, that the custodial parent who was complaining hadn't destroyed his or her custodial obligation.

Mr. PFUND. Or there is grave risk of psychological or physical harm to the child. One or the other exceptional bases; yes.

Mr. SHAW. Where do you show that, though, in our court or theirs?

Mr. PFUND. In a court here in this country where the child is located, to which the application for return has been made.

Mr. SHAW. The application then goes from from the State Department and then it falls into a court here in the United States, even though it starts from a foreign court, and then you have the adversarial proceeding here in the United States?

Mr. PFUND. That is correct, when it is in our courts.

Mr. FRANK. But the court is not allowed to relitigate the initial custody case.

Mr. PFUND. If there has been one.

Mr. FRANK. But you would have to either show one of the exceptions or say that there really wasn't custody.

Mr. SHAW. So Mrs. Planells would be stuck in a Jordan court. If they became a signatory, and if we would move this thing along, then even though she may file it here she is going to end up over there.

Mr. FRANK. The theory is that it doesn't do you much good. Americans can now go into an American court to get a declaration of their rights, but if the child is held in a foreign country there is an enforceability problem. And this is meant, as I understand it, basically the signatories agree to reciprocal enforcement of their own national orders.

Mr. LLOYD. Congressman, if I could address that concern. I think that perhaps sometimes in the general public there is a misunderstanding of what the Hague Convention itself will do, let alone what this Act would do. This is not going to assure American parents whose children are abroad that they will be able to overturn the custody orders of that foreign court. I think it is very important that we make that clear. To a certain extent, we have to rely on the wisdom of that foreign court to make a judgment that the custody order it enters is in the best interest of that particular child according to its own determination of its law. Unfortunately, for a number of American parents that will mean that they will have to litigate and, perhaps, relitigate endlessly, arguing changed circumstances in the courts of that nation that the custody order, or at least the visitation order, should be modified.

What we do know is that the act of kidnapping itself of a child by a parent causes emotional harm to that child. We hope that this act by serving both to allow the United States to implement the Convention and as a signal to other nations that the United States is taking a strong stand against international parental kidnapping, will encourage them either to create their own convention, such as Mr. Pfund spoke of with respect to some of the Islamic nations, or would later accede to the Convention and implement those.

Mr. FRANK. This law, let's be clear what we are doing. We are agreeing, if we enact this, to subject Americans who have children where there is a doubt as to their right to have custody to our enforcement processes as a condition of giving Americans access to that reciprocal right in the signatory nation.

Mr. CARDIN. Would the gentleman from Florida yield for a moment?

Mr. SHAW. Yes, I will be glad to yield.

Mr. CARDIN. I fully support the implementing legislation. I think it is very important. The philosophy here is a return to the status



quo, to try to get the child back so you discourage abduction of children. Now that is the whole purpose. So there is no reward to snatching a child and taking the child to another jurisdiction.

I think the concern that is being expressed here, though, is that despite the fact that you want to make the hearing as simple as possible and as noncontroversial as possible, whether the custodial parent had some custodial arrangement so that there is no abduction, the problem is that there will still need to be some factual determinations made by a court in this country. And the concern I think that is being expressed, at least by the questions, is that in making those decisions we are using a rather informal process for the information to be made available to the courts in this country. And that makes sense because you don't to delay, you don't want to have procedural problems. On the other side, you are requiring a very strict degree of proof by the person in this country or the person who has the physically has the child to establish that in fact there was an abduction basically or not an abduction.

And the combination thereof, I guess my question to you is do we have the right balance? We want to expedite the process. We want to return to the status quo. We want to discourage abductions. But, in the sense of due process, have we gone overboard by having an informal way of presenting the evidence to this court and a very strict standard on the person trying to set it aside?

Mr. PFUND. You have pointed out very well the considerations here, and I might just say that one of the basic concerns underlying the negotiators of the treaty was that usually the abduction of the child is to the country of the abducting parent's origin, and the abducting parent therefore usually can expect a certain home court advantage in that country. And it is partly to overcome this advantage that the Federal legislation would impose this burden of proof—to impress upon the courts and authorities in this country where the child is located how rarely the exceptions are to be invoked and how difficult it is to establish them.

Mr. FRANK. And the parent who has the actual physical custody of the child being sued in his or her own country has much less problem with document production and evidence production. The defendant does not have the disadvantage there in terms of documents and everything else. You are home. It is the complaining parent who has got to bring the stuff when there may be the problem.

Mr. Cardin, anything further?

Mr. CARDIN. I thank my colleague for yielding.

Mr. SHAW. I yield back my time.

Mr. FRANK. Mr. Pfund, anything further?

Mr. PFUND. No. I just would like to compliment the chairman. I hope that we can move promptly on this legislation. I think it is absolutely essential that we take away any reward from internationally kidnapping children. I think that is the key of the treaty, and that is what should be the essence of the implementing legislation.

Mr. FRANK. I think that is right. I think that Mr. Pfund has underlined it. We are talking here about signatories among whom there exist a fair degree of consensus as to what the rights of children are, what the role of individuals should be, what courts do.

And, as you begin to bridge cultural and value gaps there that it does become somewhat different, then a different form of treaty may be appropriate where there is some more relitigation prospect. But I think that is a very important one here.

Yes, Mr. Pfund?

Mr. PFUND. May I make one point? To avoid disappointments that some people may experience once the Convention is in force, I should emphasize that the Convention is prospective, in effect. In other words, it covers only cases arising once the Convention is in force between us and the other country involved.

Mr. FRANK. That is a fact of the Convention.

Mr. PFUND. That is in the Convention itself. In other words, it is prospective and not retrospective.

Mr. FRANK. All the more reason to keep running that clock as soon as we move.

Mr. Coble?

Mr. COBLE. Very briefly, Mr. Chairman. I apologize for my delay. I had two other meetings I had to attend.

I just want to join my colleagues in expressing thanks for you all who appeared today. This is a very vital topic and I hope, Mr. Chairman, it can be put on a fast track.

Mr. FRANK. We have a February 25th hearing date and, if we have got a quorum, we will get it out and it will be ready for the March meeting of the full committee. I think it would then go on the suspension calendar and would be passed by the end of March.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. SHAW. Mr. Chairman, so that there won't be any mistake about the questions I raised, it in no way limits my support of this legislation. I just think that these things should be threshed out.

Mr. FRANK. I am glad the gentleman said that. In fact, in the interest of moving it quickly it is important that these kind of questions be out so members know what they are doing. I appreciate that.

Yes, Mr. Coble?

Mr. COBLE. Mr. Chairman, in response to what the gentleman said, and I realize anytime that legislation is proposed that does have a retroactive effect, I presume, sir, that this is just not even being considered, right?

Mr. FRANK. Well, we can't. We don't have the option. Because the Convention which we are implementing is already signed as a prospective only, so our legislation can't go beyond the document as implemented.

Mr. PFUND. We argued as effectively as we could that there was no reason not to make it retrospective in effect because of the one-year limitation and its effects, but the other countries somehow were not able to agree to that. So it is only prospective in effect.

Mr. FRANK. I thank all of the witnesses. You have all been very helpful. We will be back. Please, all of you, feel free to continue to be in touch with any and all members of the subcommittee and the staffs on both sides as we deal with this.

The hearing is adjourned.

[Whereupon, at 12:00 noon, the subcommittee was adjourned, to reconvene subject to the call of the Chair.]



## APPENDIX



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington D.C. 20530

31 March 1988

Honorable Barney Frank  
 Chairman, Subcommittee on Administrative  
 Law and Governmental Relations  
 Committee on the Judiciary  
 United States House of Representatives  
 Washington, D.C. 20515

*Barney*  
 Dear ~~Chairman Frank~~:

This letter responds to three issues raised at the recent hearing and markup of H.R. 2673 and H.R. 3971, the International Child Abduction Act.

At the hearing and the markup, there was significant discussion about the effect of 28 U.S.C. § 1331 on the jurisdiction of the federal courts to hear claims under the 1980 Hague Convention. At the hearing, you asked the Department to comment on and suggest appropriate limitations on the state and federal privacy law override contained in section 107 of H.R. 2673 and section 7 of H.R. 3971. You also asked the Department to explain in writing the relationship between state child custody and visitation orders and the Federal Witness Protection Program, and any modifications resulting from the President's October order on federalism. Each of these issues will be addressed in turn. <sup>1/</sup>

I. Federal Court Jurisdiction

A. Restricting Actions Under the Convention to the State Courts

Mr. Markman's testimony strongly supported eliminating concurrent original federal jurisdiction from the bill and providing exclusive original jurisdiction in the state courts over all actions brought under the Convention. This was because, even though the standards of the Convention are set forth in a

<sup>1/</sup> Although the House has already passed H.R. 3971, as amended by the Judiciary Committee, the Department submits these answers and information for the record and for the use of the House should the bill go to conference.

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treaty, the concepts and principles are closely akin to traditional domestic relations inquiries that have always been handled by the state courts and do not belong in the federal district courts.

Thus, the proposed grant of federal jurisdiction would represent a sharp departure from the longstanding policy, based on principles of federalism, of excluding domestic relations matters from the federal courts and leaving the resolution of those sensitive issues entirely to the courts of the states. 2/ Mr. Markman recommended that, instead, Congress follow the approach it used when it enacted the Parent Kidnapping Prevention Act of 1980 (the "PKPA") to address the issue of interstate abductions of children in custody-related disputes.

In that legislation, Congress did not create a private cause of action in the federal courts to enforce the Act, but left it to the state courts to enforce the Act's standards, subject to review by the Supreme Court under Full Faith and Credit principles. As the Supreme Court stated in unanimously affirming this interpretation of the Act earlier this year, "instructing the federal courts to play Solomon where two states have issued conflicting custody orders would entangle them in traditional state-law questions that they have little expertise to resolve." 3/ The fact that the questions were embodied in federal law (the PKPA) did not render them suitable for federal court implementation.

The Supreme Court specifically rejected the argument that determining which of two conflicting custody decrees should be given effect would not require resolution of the underlying custody disputes and thus not offend the longstanding reservation of domestic relations law to the states. It noted that, under the Act, jurisdiction could turn on the "best interest" of the child or whether the child had been abandoned or abused. "In

2/ E.g., In re Burrus, 136 U.S. 586, 593-94 (1890); Barber v. Barber, 62 U.S. (21 How.) 582 (1859). That exception rests on the principle, in the Supreme Court's words, that "the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states." In re Burrus, *supra*, 136 U.S. at 593-94. Even when a federal question is presented, the courts have declined to hear disputes that would deeply involve them in resolving domestic relations disputes. See Thompson v. Thompson, 798 F.2d 1547, 1558 (9th Cir. 1986), *aff'd*, 108 S. Ct. 513 (1988); Firestone v. Cleveland Trust Co., 654 F.2d 1212, 1215 (6th Cir. 1981); Bergstrom v. Bergstrom, 623 F.2d 517, 520 (8th Cir. 1979).

3/ Thompson v. Thompson, 108 S. Ct. 513, 519-20 (1988).

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fact." the Court found, "it would seem that the jurisdictional disputes that are sufficiently complicated as to have provoked conflicting state-court holdings are the most likely to require resolution of these traditional domestic relations inquiries." 4/

Just as with the PKPA, actions under the Convention would similarly require courts to consider traditional domestic relations issues. The exceptions to the return obligation may be narrow, but they turn on questions such as whether the "child is now settled in its new environment" (Article 12), whether the left-behind parent was not exercising rights of custody or had acquiesced in the removal, whether "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation" (Article 13), whether the child "has attained the age and degree of maturity at which it is appropriate to take account of its views" (Article 13), whether it "would not be permitted by this fundamental principles of the requested state relating to the protection of human rights and fundamental freedoms" (Article 20), and whether any custody determinations had been rendered in the country receiving the request (Article 17).

These are all questions that go to the heart of traditional domestic relations matters. The fact that in this case the standards are based on the Convention, and not directly on state law, does not alter the fact that these inquiries are of a character never handled by federal courts, just as Congress and the Supreme Court recognized that the similar federal standards under the Parental Kidnapping Prevention Act were also in the nature of traditional domestic relations inquiries best handled exclusively by the state courts.

We would also note that, with respect to international child custody disputes in particular, the state courts already have experience under Section 23 of the Uniform Child Custody Jurisdiction Act in interpreting and enforcing foreign custody orders. Moreover, there is nothing in the Convention that requires federal court jurisdiction of cases under the Act. Article 41 specifically reserves the right of countries with federal systems of government to determine the "internal distribution of powers" within those countries.

The provisions of S. 1347 implementing the 1980 Hague Convention are even more inextricably intertwined with traditional state law matters than was the PKPA. Under section 103 of the bill, federal courts would be authorized "to take . . . provisional measures under Federal or State law, as appropriate, to protect the well-being of a child or to prevent the child's further removal or concealment prior to final

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4/ Id. at 520 n.4.

disposition of the petition." The bill forbids the provisional removal of a child from his or her custodian "unless the applicable requirements of state law are satisfied," deeply enmeshing the federal courts in state domestic relations law. Further, it appears that to effect such provisional remedies as temporary foster care, the federal courts would be required to make arrangements with state and local authorities, entangling the federal courts in the state and local government agencies and procedures regulating domestic relations.

Finally, the Convention also provides for actions to "make arrangements for organizing or securing the effective exercise of rights of access." We see no justification, and have heard no explanation of, why the federal courts should be given original jurisdiction of such actions to determine if visitation rights exist and if so to secure rights of access.

Some argue that concurrent state and federal jurisdiction is needed to promote uniformity of interpretation of this legislation. Quite to the contrary, however, concurrent jurisdiction would likely be disruptive and lead to increased conflicts among the state and federal courts. Simply put, providing for federal and well as state court jurisdiction would substantially increase the number of courts to which cases under this Act may be brought. Each plaintiff would have the choice of a federal or state forum. Yet, the federal courts and state courts, even in the same state, would not be able to render interpretations of the Act that are binding on the other. Moreover, many states have multiple federal districts, leading to the possibility of conflicts between federal courts in the same state. Even after the federal court of appeals resolved those conflicts, that court's judgment would not be binding on the state courts of the state, nor would the judgment of the state supreme court be binding on the federal courts. This may lead to considerable confusion as well as the possibility of forum shopping should the federal court of appeals and the state supreme court render conflicting interpretations of the Act.

As always, the Supreme Court is available to resolve such conflicting judgments among the lower courts. However, far from promoting uniformity, vesting jurisdiction not only in the state courts but in the 94 federal district courts would actively work to undermine uniformity of interpretation, by adding additional possibilities for conflict without providing the means for promoting uniformity, even for residents of the same state.

#### B. Federal Jurisdiction of Convention Claims

For all of these reasons, the Department opposes concurrent jurisdiction in the federal courts of claims arising under the Convention. At the hearing and markup, however, it was suggested that 28 U.S.C. § 1331 would create jurisdiction in the

federal courts to hear claims under the Convention even if the bill granted original jurisdiction only to state courts. It was also suggested that, under sections 1331 and 1441, a party could, before or after filing an action in state court under the Convention, obtain a decision from a lower federal court on any federal questions, and then return to state court to try the rest of the case. Sections 1331 and 1441 do not, however, operate in this manner.

There is no constitutional requirement that cases involving federal laws or treaties be heard in federal courts. <sup>5/</sup> The jurisdiction of the federal district courts extends only to those cases as provided by Act of Congress.

Section 1331 provides that the "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, and treaties of the United States." The establishment of federal requirements by statute or treaty does not, under section 1331, necessarily create a cause of action in the federal courts to enforce them. As discussed above, that is the lesson of the Thompson case, which held that the federal standards of the Parental Kidnapping Prevention Act created no cause of action in the federal courts, but were to be enforced only in the state courts, subject ultimately to review, on issues of federal law, in the Supreme Court. <sup>6/</sup>

<sup>5/</sup> Indeed, although creation of federal question jurisdiction was authorized in Article III, § 2 of the Constitution, Congress did not vest general federal question jurisdiction in the federal courts until 1875. Act of Mar. 3, 1875, §1, 18 Stat. 470. Moreover, until 1980, jurisdiction in the district courts under § 1331 was limited to cases involving a jurisdictional minimum amount (\$10,000 before it was eliminated by Pub. L. No. 96-486, § 2(a), 94 Stat. 2369). Currently, jurisdiction of claims arising under the Carmack Amendment, 49 U.S.C. § 11707, and the Consumer Product Safety Act, 15 U.S.C. § 2072(a), involving less than \$10,000 are confined to the state courts, as are claims for less than \$50,000 arising under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(3).

<sup>6/</sup> The Federal Safety Appliance Acts, 45 U.S.C. §§ 1 et seq., are another example of statutes creating federal standards that do not, of themselves, create a cause of action in the federal courts. In Moore v. Chesapeake & Ohio Railway, 193 U.S. 205, 215 (1934), the Supreme Court held that, as to intrastate commerce, the

Federal Safety Appliance Acts, while prescribing absolute duties, and thus creating correlative  
(continued...)

Thus, section 1331 would not preclude Congress from limiting to the state courts original jurisdiction of actions under the Convention. To make the point absolutely clear, the bill should provide for "exclusive original jurisdiction" in the state courts. 1/

### C. Decisions on Federal and Nonfederal Issues

Section 1331, by its terms, is a grant of original, not appellate jurisdiction. Section 1441, which authorizes removal from state to federal court of cases in which the district courts have original jurisdiction, is similarly not a grant of appellate jurisdiction. Thus, sections 1331 and 1441 would not authorize appeals of federal or other issues under the Convention from state courts to the federal district courts.

Both sections 1331 and 1441 provide federal district court jurisdiction over actions, not just issues, arising under the Constitution, treaties, and laws of the United States. It follows that, if a district court has original or removal jurisdiction of an action arising under federal law, it must

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6/ (...continued)

rights in favor of injured employees, did not attempt to lay down rules for enforcing those rights . . . . The . . . Acts having prescribed the duty in this fashion, the right to recover damages sustained by the injured employee through the breach of duty sprang from the principle of the [state] common law . . . and was left to be enforced accordingly.

With respect to treaties, federal courts have no diversity or federal question jurisdiction over probate, yet probate courts are frequently called upon to interpret international treaties in determining ownership of property and on reciprocal rights. See, e.g., In re Estate of Rougeron, 17 N.Y. 2d 264, 270 N.Y.S.2d 578 (1966) (interpreting 1850 U.S.-Swiss treaty with respect to decedent's property in Switzerland); Estate of Arbulich, 41 Cal. 2d 86, 257 P.2d 433 (1953) (applying treaties and foreign law to determine reciprocal rights in Yugoslavia).

- 2/ For the same reason, we would not oppose the amendment No. 2 that was offered by Representative Cardin at the subcommittee markup, which would limit original jurisdiction to the state courts, "notwithstanding section 1331 or 1332 . . . or any other provision of law."

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decide all issues, federal and nonfederal, necessary to dispose of the action. <sup>8/</sup>

In this respect, the grant of original and removal jurisdiction by sections 1331 and 1441 differs from the grant of appellate jurisdiction in the Supreme Court of federal questions under section 1257. As one group of commentators put it, "When the Supreme Court is reviewing a state court decision it can and does confine its review to the federal question in the case, but a court of original jurisdiction could not function . . . unless it had power to decide all the questions that the case presents." <sup>9/</sup>

In a case brought under the Convention, the action would be for return of the child or enforcement of access (i.e., visitation) rights. If such an action were brought in or removed to a federal district court, that court would be required to dispose of the claim for the return of the child or enforcement of access rights, without remand or transfer to state court, even if state law issues were involved. <sup>10/</sup>

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<sup>8/</sup> Siler v. Louisville & Nashville Railroad Co., 213 U.S. 175 (1909); Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 823 (1824) (interpreting U.S. Const. art. III, § 2); see Hagans v. Levine, 415 U.S. 528, 554 (1974) (Rehnquist, J., dissenting); UMW v. Gibbs, 383 U.S. 715 (1966).

<sup>9/</sup> 13B C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3567, at 107 (1984).

<sup>10/</sup> A federal court may remand to state court a case that has been removed in only three situations: (1) if a separate and independent nonremovable claim has been joined and removed to federal court with a removable claim, the nonremovable claim may be remanded in the district court's discretion, 28 U.S.C. § 1441(c); (2) if "at any time before final judgment it appears that the case was removed improvidently and without jurisdiction," the case must be remanded, id. § 1447(c); or (3) in the case of state-law claims pendent to the district court's federal question jurisdiction, the court may, in its discretion, remand the pendent state-law claims once all federal-law claims have been eliminated (such as by dismissal or voluntary amendment of the pleadings), Carnegie-Mellon University v. Cohill, 108 S. Ct. 614 (1988). See also Thermtron Prods. Inc. v. Hermansdorfer, 423 U.S. 356 (1976). None of these exceptions would apply to a claim brought under the Convention and removed to federal court, however, because such claims arise under federal, not state, law (even though (continued...))

In other words, current law does not provide for bifurcated treatment of federal and nonfederal issues arising in a single action. If the case could be brought in or removed to federal court, the federal courts would decide all federal and nonfederal issues necessary to dispose of the action, without remand to the state courts. Conversely, if the action were brought in the state courts, without being removed to federal court, the federal and nonfederal issues would be decided by the state courts, subject to Supreme Court review under section 1257 on federal issues. Sections 1331 and 1441 simply do not provide for appeals or limited referrals of federal issues from state courts to federal district courts.

#### D. Bifurcation of Proceedings

The Department would also oppose amending the bill expressly to bifurcate between the federal and state courts actions under the Convention. Each a bifurcation of issues would be unprecedented. Moreover, apart from the additional complexity such a proposal would introduce, allowing or requiring parties to obtain decisions of federal law issues from federal district courts before concluding proceedings in state court would needlessly prolong those cases and delay the return of children or the enforcement of access rights.

#### E. Jurisdiction under the House Bill

Although the jurisdictional language of H.R. 3971 as adopted by the House does not explicitly establish concurrent jurisdiction in the state and federal courts, by referencing section 1331, the bill appears to contemplate a similar result. As passed by the House, the bill would provide state courts original jurisdiction of "actions arising under the Convention," and federal courts jurisdiction "of any action arising under the Convention to the extent authorized by chapter 85 of title 28" of the U.S. Code, which includes section 1331. The implication of this language seems to be that, because the Convention is a

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10/ (...continued)

some state-law determinations may be involved in resolving the federal cause of action).

Of course, if other actions, arising under state law and not under the Convention, have been joined with the action under the Convention, those other claims may be dismissed from federal court if the district court determines that it lacks, or in its discretion declines to exercise, pendent jurisdiction of the state law claims. See UMW v. Gibbs, 383 U.S. 715 (1966).



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treaty of the United States, all actions "arising under the Convention" would, by definition, fit within the federal courts' section 1331 jurisdiction, which covers "all civil actions arising under the . . . treaties of the United States." <sup>11/</sup> Thus, both the federal and state courts may have jurisdiction over actions "arising under the Convention." <sup>12/</sup> Accordingly, for the same reasons that the Department opposes concurrent original jurisdiction, it would oppose the dual jurisdiction established by the bill as passed by the House.

## II. Privacy Laws

As Mr. Markman stated in his testimony, the Department has recommended more narrowly tailoring the privacy law override in section 107 of H.R. 2673 (and section 7 of H.R. 3971) to the purposes of the Convention. The expectations of privacy protected by federal and state law are quite important, and should be respected to the extent possible in implementing the Convention. On the other hand, an abducting parent should not be able to use the privacy laws (whether state or federal) as a shield to conceal his or her location or the location of the internationally abducted child.

We think that allowing the Central Authority to override federal and state privacy laws only to obtain information on the location of the abducting parent or the child would strike the appropriate balance between protection of privacy interests and facilitating the return of abducted children. This is similar to the balance struck in 42 U.S.C. § 653, which allows the Parental Locator Service to override federal privacy laws to obtain from federal agencies information to locate absent parents. Under this type of limitation, the Central Authority could receive and disclose other information to implement the Convention, but it could not override state and

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<sup>11/</sup> Of course, not all issues relating to the Convention would necessarily "arise under" it, but most such issues would likely come within the federal courts' pendent jurisdiction.

<sup>12/</sup> We would note that, inasmuch as 28 U.S.C. § 1441 is not part of chapter 85 of title 28, removal jurisdiction from state to federal courts might not be available under the bill as passed by the House.

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federal privacy laws to obtain such additional information. 13/

### III. The Federal Witness Protection Program and State Child Custody and Visitation Orders

The interrelation of state child custody and visitation orders and the Federal Witness Protection Program is governed in detail by 18 U.S.C. § 3524, enacted by Congress as part of the Comprehensive Crime Control Act of 1984. In brief, that section provides that before relocating under the program a person who has legal custody of a child, the Attorney General is to examine any court order governing custody and visitation to assure that compliance with the order can be achieved. If the Attorney General concludes that compliance cannot be achieved, the parent cannot be relocated until he or she brings an action, as provided by the Act, to modify the order, and agrees to comply with any ensuing court orders.

The Attorney General is to notify the nonrelocated parent as soon as practicable after the relocation of a parent and child under the program. The notification is to state that the rights of the nonrelocated parent to custody, visitation, or both, will not be infringed by the relocation.

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- 13/ As passed by the House, the bill no longer contains an explicit override of federal and state privacy laws, but continues to require state or federal departments and agencies to comply with any request for information "authorized to be provided to such Central Authority under subsection (a)." Subsection (a) of the amended bill authorizes the Central Authority to receive and transmit "information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child." Paragraph (1) of subsection (a) provides that the Central Authority may receive such information "only pursuant to applicable Federal and State statutes." We interpret this to mean that there is no override at all of state and federal privacy and other laws (except to the extent the Parental Locator Service is separately authorized to provide such information). In order to make this point clear, the proviso of subsection (a)(1) should be carried over to subsection (c); moreover, the census information exception in subsection (c)(2) would appear to be redundant.

As Mr. Markman stated, and as the amended bill now recognizes, the Central Authority's ability to obtain and disclose information should also be limited to protect state and federal law enforcement interests, as well as national security interests and, if privacy laws are otherwise overridden, the privacy of census information.

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The statute further provides that the Department of Justice is to pay "all reasonable expenses of transportation and security incurred in insuring that visitation can occur at a secure location as designated by the United States Marshals Service, but in no event shall it be obligated to pay . . . for visitation in excess of thirty days a year, or twelve in number a year." During fiscal year 1987, 212 child visitations took place, at an average cost of \$4,800 per visit.

Thus, the Federal Witness Protection Program does not extinguish or ignore the visitation rights of nonrelocated parents, but carefully respects and accommodates those rights. Even where it is not possible to comply with a custody or visitation order, the Program does not unilaterally override the state order, but rather an action must be brought, as provided in the Act, to modify the order. 18 U.S.C. § 3524(d)-(f).

Inasmuch as the relationship of the Federal Witness Protection Program and state child custody and visitation orders is explicitly governed by statute, the President's order on federalism has no direct effect on it. We would note, however, that the Act appears to accommodate the interests protected by those state court orders in a manner consistent with the federalism concerns articulated by the President's order.

#### IV. Conclusion

As stated in Mr. Markman's testimony, the Department of Justice strongly opposes the grant of jurisdiction in the federal district courts of actions under the Convention, and favors limiting such cases to the state courts, subject to review by the Supreme Court under 28 U.S.C. § 1257.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

  
Thomas M. Boyd  
Acting Assistant Attorney General

L. RALPH MECHAM  
DIRECTOR

JAMES E. MACKLIN JR.  
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

WASHINGTON, D.C. 20544

February 24, 1988

Honorable Barney Frank  
Chairman, Subcommittee on Administrative  
Law and Governmental Relations  
Committee on the Judiciary  
U. S. House of Representatives  
B351A Rayburn House Office Building  
Washington, D.C. 20515-6218

Dear Mr. Chairman:

It has been brought to my attention that your subcommittee recently held a hearing on legislation to implement the 1980 Hague Convention on the Civil Aspects of Parental International Child Abduction (H.R. 2673). These provisions establish a statutory framework for an international structure to deal with the wrongful abduction or removal by a parent of a child from one country to another. Concurrent Federal and State court jurisdiction is provided to determine whether a child in the United States was wrongfully removed to or retained in the United States. Similar legislation has been introduced in the Senate (S.1347).

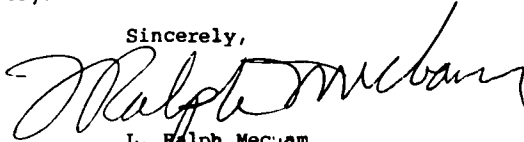
In 1986, the Judicial Conference of the United States was asked by the Executive Branch to review a draft of this measure then being considered for transmittal to the Congress. Viewing most of the provisions as matters of policy for the Congress, the Conference considered only the issue whether Federal courts should have concurrent jurisdiction with State courts over litigation under the convention. The Conference concluded that the bill should be modified to eliminate concurrent Federal jurisdiction under the convention (Conference Report, March 1986, p. 12). A copy of the relevant portion of the Conference proceeding is enclosed.

I would appreciate it if the position of the Judicial Conference could be inserted into the hearing record on H.R. 2673 for consideration by the Members of the Subcommittee in this matter.

Honorable Barney Frank  
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If you have any questions, please have your staff  
contact Paul Summitt in the Office of Legislative and Public  
Affairs (633-6040).

Sincerely,

A handwritten signature in black ink, appearing to read "L. Ralph Meckham". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

L. Ralph Meckham  
Director

Enclosure

cc: Congressman E. Clay Shaw, Jr.

**REPORT**  
  
**of the**  
  
**PROCEEDINGS OF THE**  
  
**JUDICIAL CONFERENCE OF THE**  
  
**UNITED STATES**

**March 12-13, 1986**

**Washington, D.C.**  
**1986**

to be filed in federal courts. This not only increases the burden on the federal courts, but causes friction with the state court system.

Further, in that actions under the statute may be predicated on federal securities or antitrust violations, the statute overlaps and may tend to confuse well-established separate regulatory schemes.

For these reasons, the Judicial Conference respectfully suggests that the Congress should seriously consider narrowing the reach of this statute.

### **FEDERAL JURISDICTION UNDER INTERNATIONAL CHILD ABDUCTION CONVENTION**

The Hague Convention on the Civil Aspects of International Child Abduction has been signed but not yet ratified by the United States Senate, and implementing legislation to accompany the treaty will be transmitted to both houses of Congress. The draft legislation, which establishes the statutory framework for an international structure to deal with the wrongful abduction or removal by a parent of a child from one country to another, provides concurrent federal and state court jurisdiction to determine whether a child in the United States was wrongfully removed to or retained in the United States.

The sole issue considered by the Committee was whether federal courts should have concurrent jurisdiction with state courts over litigation under the convention. It was the unanimous view of the Committee that state interest in and experience with child custody disputes, coupled with the traditional absence of federal involvement in such matters, justified modification of the legislation to eliminate concurrent federal jurisdiction under the convention. The Conference concurred in the Committee's recommendation, and authorized the transmission of this position to the Department of State.

PRESENTATION OF DR. JOHN KALLOS  
TO THE SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENT RELATIONS  
U.S. HOUSE OF REPRESENTATIVES  
FEBRUARY 22, 1988

I thank you, Mr. Chairman, for the opportunity to submit my testimony on the problem of international parental child abduction and on the urgent need for legislative action to ratify the Hague Convention.

For thousands of internationally kidnapped American children (approximately 10,000 according to American Children Held Hostage), this Hague Convention is their only hope of being reunited with their American family. In most cases these children have not visited nor even seen their American family and friends for several years since they were abducted by their non-custodial parent.

Among these abducted young Americans are my two children, Stephane (12 years) and Genevieve (10 years). Stephane and Genevieve were kidnapped for the fourth time almost two years ago and are still being held in Montreal, Canada by their noncustodial mother in direct violation of both U.S. and British Columbian court orders.

As a father I am desperate to be reunited with my children. I have pursued all possible legal and political channels. But after more than a year and a half of struggle with local, state and federal authorities in the U.S., as well as with provincial and federal authorities in Canada, and extensive and expensive litigation in the New York State and Quebec courts, Stephane and Genevieve are still no closer to home.

I hope however, as a result of the expected ratification of the Hague Convention this spring, to have my children back home with me permanently this summer.

Perhaps in telling you my experiences, which add up to a bureaucratic and emotional nightmare (like those of ALL the parental victims), it will help clarify what is wrong with the present system and how we may correct it to protect these helpless young American citizens.



I wish to emphasize the following two points:

1. The present system offers an unfair advantage to international kidnappers leaving the parental victims and their children nowhere to turn for help.

Neither federal, state nor local officials want to nor are now required to get involved in these cases.

2. It is important that the Hague Convention be ratified as quickly as is humanly possible because each day another American child is lost to our shores.

In addition, summer visitation is the time when most child abduction occurs. We can only protect our children during their visits to their non-custodial parents abroad if the Convention is in effect prior to their departure.

In my specific case, Stephane and Genevieve will be returned to me immediately provided that the Convention becomes effective on or before August 15, 1986.\* If not, I lose them forever!

I will now give you a brief description of what happened to my children, what I have done to try to bring them home and what I expect to achieve through the Hague Convention.

#### CASE SUMMARY

Stephane and Genevieve, native New Yorkers, were abducted for the fourth time by their mother Madeline LaPorte during their summer visit in 1986.

At the time of the abduction I had custody of the children, as well as an assessment guaranteeing their

\*Stephane and Genevieve have been wrongfully retained (according to the Convention) since August 15, 1986. The Convention MUST be enforced in such cases within two years.

safe return following visitation with their mother in Canada. Both the custody documents and the guarantee orders were filed in New York and Vancouver, B.C. where Ms. LaPorte had been residing.

The guarantee order was issued because Ms. LaPorte had abducted the children on three previous occasions. On the last occasion, having disappeared and been hidden for over a year, the children were located in Vancouver in mid-1984 after a picture of Stephane appeared on the television program Adam. The British Columbian court, after a full hearing, chose to honor the New York State jurisdiction and returned the children to me.

In the summer of 1986, I felt safe sending the children to Ms. LaPorte's new home in Quebec because of the existing Canadian and American custody orders and the document guaranteeing their return. However, instead of honoring these orders, the Montreal court unilaterally overturned the existing decrees and is continuing to protect the abductor.

I am being denied free access to my children despite the fact that the Montreal Crown Prosecutor issued a felony warrant for the abductor's arrest. On September 11, 1986 a hearing in Montreal on jurisdictional issues clearly determined that the New York and British Columbian custody orders were valid, that Ms. LaPorte had lied to the Quebec court when she obtained her interim custody order, that I am a good and conscientious parent, and that the children were happy living in New York. In spite of this, the Quebec judicial system has clearly decided not to recognize the constituted orders from respected courts in other jurisdictions and is determined to protect the abducting parent.

I have had no free visitation with Stephane and Genevieve since the abduction nor have they been able to visit their friends and family in New York. This denial of visitation is being used as a form of pressure to force me to abandon my appeal and give up all of my and my children's rights in the American courts.

ACTIONS TAKEN/BUREAUCRATIC MORASS

Since my children were abducted I have made all possible efforts to be reunited with them. This includes numerous letters to the following officials: the Secretary of State, the U.S. Attorney General, the Governor of New York, the New York Attorney General, the Manhattan District Attorney, many U.S. Senators and Representatives, New York State Senators and Assemblymen and the National Center for Missing and Exploited Children.

I asked them to urge the Canadian authorities, more specifically the Attorneys General of Canada and of Quebec, to respect and recognize existing U.S. court orders. I received no help whatever from the various representatives of the U.S. local, state and federal agencies. The state and local authorities recommended I go to the State Department and to the U.S. Attorney General. Although it would seem to have been their responsibility, the State Department was unwilling to get involved on the grounds that my problem was a "domestic custody dispute."

When I called the State Department I got the following response: "You parents expect us to send the U.S. Marines to Canada to rescue your kids! If your children are gone, it's up to you to try to get them back."

Although parental child abduction is a felony under New York State law, getting the local district attorney to enforce this law is quite another matter and varies from district to district.

In my case the Manhattan District Attorney, Robert Morgenthau, refuses to have his office get involved in such cases. He perceives these cases as "domestic issues" and will not allow his limited budget to be "wasted" on them. Thus I was unable to obtain a state felony warrant which I needed in order to get a federal fugitive warrant.

Several U.S. Senators and Representatives and people at the National Center wrote numerous letters on my behalf to Canadian authorities. The Canadian federal authorities responded that they cannot get involved in my case because it is in the provincial

jurisdiction of Quebec. The provincial authorities in turn ignored all inquiries. I myself met with the Deputy Solicitor General of Canada but to no avail.

However Canadian officials expressed great interest in furthering close cooperation between our two governments and facilitating the return of abducted children. In fact, over the past year there have been several high level U.S./Canadian meetings on the subject. Although my case was presented to the Canadians at one of these meetings no action has been taken.

Then I and several other victimized parents founded a national organization called American Children Held Hostage (ACHH) whose purpose is to focus public and government attention on this urgent issue.

Through ACHH I have worked in close cooperation with Senator Alan Dixon and his dedicated staff -- Sarah Peng in particular. In October 1987, through Senator Dixon, I was able to meet with high level State Department officials. I have gotten no response.

I have attended and been legally represented at numerous court hearings both in New York and Montreal. The New York State Supreme court has issued numerous injunctions and orders which the Montreal court has simply ignored.

### THE HAGUE CONVENTION

The Hague Convention is very specific in dealing with cases such as mine. Article 35 can be construed to cover wrongful retention cases which began before the Convention took effect but which continued and were ongoing after its entry into force.

Under Article 17 the harboring state cannot refuse to return the child solely on the basis of a court order awarding custody to the alleged wrongdoer by one of its own courts.

CONCLUSION

As NBC-TV News reported in March 1987, "though Kelloe clearly has New York State law on his side, no governmental agency -- federal, state or local -- has been willing to back him or put pressure on the Montreal courts -- not the State Department, not the governor, not the attorney general, not even the Manhattan district attorney!"

I have spent whatever monies I had and have gone deeply into debt in the process of trying to regain Stephane and Genevieve. My career as a senior cancer researcher has been practically destroyed. My children have been completely isolated and cut off from their home, family and friends since July 1986. This isolation is cruel and emotionally unhealthy for the children and has resulted in serious depression and anger.

I crave a return to normalcy. I want my kids home. I want to help them deal with the emotional scars caused by all these senseless abductions. I want to be able to tell them that it can NEVER happen again with the passage of the Hague Convention all of this will come true.

Gentlemen, I thank you.

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